

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 RICHMOND DIVISION

LULA WILLIAMS, et al., on behalf	:	
of themselves and all individuals	:	Civil Action No.
similarly situated	:	3:17CV461
vs.	:	
BIG PICTURE LOANS, LLC, et al.	:	
	:	
and	:	July 21, 2020
	:	
RENEE GALLOWAY, et al., as	:	
individuals and as representatives	:	
of the classes	:	Civil Action No.
vs.	:	3:18CV406
BIG PICTURE LOANS, LLC, et al.	:	
	:	

COMPLETE TRANSCRIPT OF THE EVIDENTIARY HEARING

BEFORE THE HONORABLE ROBERT E. PAYNE

UNITED STATES DISTRICT JUDGE

APPEARANCES:

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VOLUME 1 OF 2

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 United States District Court

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P R O C E E D I N G S

THE CLERK: Case number 3:17CV461, Lula Williams, et al., v. Big Picture Loans, LLC, et al., and case number 3:18CV406, Renee Galloway, et al., v. Big Picture Loans, LLC, et al. The plaintiffs are represented by Leonard Bennett, Kristi Kelly, Amy Austin, and Kevin Dillon. The defendant Matt Martorello is represented by Richard Scheff, John Erbach, Michael Witsch, and Doug Marsh. Are counsel ready to proceed?

MR. BENNETT: Plaintiffs are, Your Honor.

MR. SCHEFF: Yes, Your Honor.

THE COURT: All right. This hearing is being also conducted by Zoom, by way of Zoom; is that right? Who is present on Zoom, either audio or video? Jon Hollis, who are you with, Mr. Hollis?

MR. HOLLIS: Good morning, Your Honor. This is Jon Hollis. I'm with the law firm Woods Rogers, PLC. I represent the Bluetech Irrevocable Trust in the action Galloway 2.

THE COURT: Karen Brewer, member of the public. Ms. Brewer, do you have any plan to try to make a statement or to tell us anything?

MS. BREWER: No, Your Honor.

THE COURT: Are you a member of the class that is proposed in either one of these cases?

MS. BREWER: No, Your Honor.

1 THE COURT: All right. Casey Nash, that's your
2 partner, or your lawyer who is associated with the plaintiffs.
3 John Scofield, attorney --

4 MR. SCOFIELD: Yes, Your Honor.

5 THE COURT: Who are you a lawyer for, Mr. Scofield?

6 MR. SCOFIELD: I'm not appearing today as counsel of
7 record for any parties. I'm attending as a member of the
8 interested public. I'm a co-counsel in the Oregon and
9 Massachusetts litigation on behalf of the plaintiffs.

10 THE COURT: On behalf of the plaintiffs in the cases
11 in Oregon and Massachusetts?

12 MR. SCOFIELD: Yes, Your Honor.

13 MR. BENNETT: Your Honor, Mr. Scofield is also --
14 he's with the firm of Caddell & Chapman. You met Mr. Caddell.
15 They are now joining up with us in this litigation. Mr.
16 Scofield has been a lawyer that I've known for quite sometime
17 and worked with my partner, Craig Marchiando.

18 THE COURT: Mr. Scofield, you're not planning to make
19 any statements or testify or anything, are you?

20 MR. SCOFIELD: No, Your Honor.

21 THE COURT: Mr. Marchiando is counsel of record in
22 these cases. And there's no one else? Are there any witnesses
23 who are not parties who we need to sequester? No? All right.
24 Thank you.

25 Sometime ago in one of the pleadings filed in one of

1 these cases or both of these cases, it was asserted that Matt
2 Martorello and others had made misrepresentations of material
3 fact in previous proceedings in the Williams case. Those
4 misrepresentations were alleged to have been made to this Court
5 and to the United States Court of Appeals for the Fourth
6 Circuit.

7 Thereafter, Mr. Martorello filed papers -- Mr.
8 Martorello is in Galloway -- is in Williams and Galloway 1?

9 MR. SCHEFF: Yes, Your Honor, that's correct.

10 THE COURT: And I think he filed them in both cases,
11 saying that the Williams decision in the Fourth Circuit was an
12 important part of pending motions in this case, motions to
13 dismiss, motions for jurisdiction, other motions, and denied
14 that there were any misrepresentations that were made by him or
15 by anybody else.

16 Accordingly, the Court concluded that it was
17 necessary to understand, A, what the misrepresentations were,
18 and, B, what the proof was that they were, in fact,
19 misrepresentations, and, subsequently, it will be necessary to
20 determine the extent to which they were material or relied
21 upon, but, at this stage, the issue of materiality is not
22 really at issue, and the -- except as pertains to whether or
23 not evidence proffered is relevant.

24 I asked the parties to submit written -- make written
25 submissions, and they did, and there were revised written

1 submissions, as I recall, and the parties asked that there be
2 an evidentiary hearing, and I agreed that we could have an
3 evidentiary hearing. I'm not quite sure one was necessary, but
4 I take the view that if parties believe they can demonstrate
5 matters better in person, then I'm perfectly happy to have
6 that.

7 Given that there were some credibility questions
8 raised in the papers, I concluded that the evidentiary hearing
9 was an appropriate way to understand better how to resolve the
10 matter. It had been my intent to proceed in a way that I have
11 proceeded in other matters, and that is to allow the parties to
12 submit depositions and deal with the designations and any
13 objections to them and then to consider just the parts -- have
14 the parties edit the tapes just to the parts that I had not
15 sustained any objections to or to which there was no objection
16 made and was told last week that there's some -- in preparation
17 for that, that there's some 22,000 lines of deposition
18 testimony at issue, and that is an utterly ridiculous way to
19 try to deal with any evidentiary issue, for the judge to do it
20 on his own or argue line by line for thousands of lines.

21 Therefore, what I did was tell each side that you
22 have four hours to present whatever you're going to present at
23 this hearing, and I will consider it, and you are on your own
24 as to what you want to present. If there's a video, you're
25 supposed to present the videotape and present it to me in that

1 fashion, or if you have somebody read from the stand in that
2 fashion, present it in that fashion, that's how you use your
3 time. It's your business.

4 I'll consider in making the decisions those things
5 that have been appended to the written filings, because I have
6 begun the process -- I've read the papers, and I've seen a good
7 many of the supporting documents, but I don't know that I can
8 say I've seen them all.

9 So when we start, each person will have four hours.
10 Each side is supposed to have somebody keeping time. When you
11 are talking, your time is running. When I'm talking, your time
12 is -- no time is running. So when I'm ruling on an objection,
13 for example, no time is running.

14 I expect during each recess each side to coordinate
15 and talk with the other side about the time and make sure that
16 we're roughly the same. We're not going to quibble over
17 seconds. I'm going to resolve -- if there's a discrepancy of
18 less than a couple of minutes, I'm going to resolve in favor of
19 giving the party with the lowest time the -- that will be the
20 time we will use, and then they'll have that rather than the
21 highest time.

22 That is the -- if the two representatives of the
23 parties quarrel over what the time is, then the lowest time
24 will be the time selected if it's less than two minutes. If
25 it's more than that, I'm going to have to deal with it. And I

1 may end up expanding that as we go along. I'm hopeful we can
2 get it straight. So I'm expecting to hear from you what you
3 have to say.

4 Did anyone one want to make an opening statement,
5 because I will not count that as part of the four hours, but I
6 will not allow it to go forever. Do you wish to make an
7 opening statement?

8 MR. BENNETT: Very brief.

9 THE COURT: Do you wish to make an opening statement?

10 MR. SCHEFF: Yes, Your Honor, very briefly.

11 THE COURT: The time does not apply to the opening
12 statement.

13 THE CLERK: Judge, if I can interrupt --

14 THE COURT: Hold on a minute, please, Mr. Bennett.

15 THE CLERK: I just submitted a phone number, 610704,
16 into the meeting.

17 THE COURT: And who is that?

18 MR. GUZZO: Thank you, Nikki. This is Andrew Guzzo,
19 Your Honor. Sorry, I was having difficulty dialing in.

20 THE COURT: Andrew Guzzo is a member of Ms. Kelly's
21 law firm -- right? -- and counsel of record on the case.

22 MR. GUZZO: Yes, Your Honor.

23 THE COURT: Did you have something you need to take
24 up?

25 MR. BENNETT: No, sir.

1 THE COURT: All right. Remember that when you are
2 speaking, you need to be at the lectern with your mask off so
3 that the court reporter can hear you, and my mask is off so she
4 can hear me. If there's going to be a witness, the witness
5 will have the mask off, and after the testimony, the witness
6 will be handed a wipe and will wipe down the microphone and the
7 area around. How many live witnesses are you planning to call,
8 Mr. Bennett?

9 MR. BENNETT: Your Honor, we only plan on calling Mr.
10 Martorello.

11 THE COURT: All right, Mr. Martorello. And how many
12 live witnesses are you planning to call?

13 MR. SCHEFF: Your Honor, we'll just be calling Mr.
14 Martorello as well.

15 THE COURT: So the record is clear, you mean Matt
16 Martorello?

17 MR. SCHEFF: That's correct, Your Honor.

18 THE COURT: There was some -- Mr. Justin Martorello
19 was listed as someone who might attend by telephone, but that's
20 not happening; is that correct?

21 MR. SCHEFF: Well, it will depend on the plaintiffs'
22 presentation, but presently we do not intend to call him, and
23 it would be remotely if we did call him.

24 THE COURT: All right. Thank you. Mr. Bennett.

25 MR. BENNETT: Thank you, Judge.

1 THE COURT: So it is your intention to see if you
2 can -- you're going to hand some papers. I couldn't figure out
3 why you were masking up.

4 MR. BENNETT: Your Honor, this is just for the Court,
5 the court reporter, and Your Honor's law clerk's benefit a copy
6 of the declaration of Mr. Martorello that we'll be using as our
7 roadmap in our presentation. That's also an exhibit that's
8 been designated, but we just provided a paper copy.

9 THE COURT: That's document number 106-1 according to
10 the top.

11 MR. BENNETT: Yes, sir. Out of the Williams matter.

12 THE COURT: Now, Mr. Scheff, I take it, has a copy.

13 MR. BENNETT: I gave him a copy just now.

14 MR. SCHEFF: I do, Your Honor.

15 MR. BENNETT: The other thing, Judge, logistically,
16 the only other -- presently the only video deposition that we
17 intend to play is that of a gentleman -- I think both sides are
18 playing part of him -- Mr. Scott Merritt. Part of the
19 deposition has some objections that the defendant has made. I
20 would -- none of them are privilege or something I think that
21 would contaminate a record, and I've alerted Mr. Scheff to this
22 issue.

23 I would ask for the courtesy of allowing to play the
24 video, and if there are parts of that at the end of that --
25 it's an 18-minute clip -- that the defense counsel wishes to

1 address the Court on in terms of objection, that that be
2 permitted and that be permitted not part of the defendant's
3 time.

4 So, for example, rather than have to start and stop
5 the video dep logistically.

6 MR. SCHEFF: Your Honor, this is -- as we see this,
7 this is a hearing where the Court is trying to determine
8 whether or not material misrepresentations have been made. You
9 ought to hear the evidence. You ought to hear all the
10 evidence. To the extent that you choose to credit something,
11 you will. To the extent you choose to give it less weight, you
12 will. Unless there's something egregious in what they have
13 clipped from Mr. Merritt, I doubt we're going to have an
14 objection.

15 THE COURT: All right. If you proceed in that
16 fashion, you'll have to identify what part of it that you are
17 objecting to so they can go back and play the question and
18 answer so I can understand it.

19 MR. SCHEFF: Yes, Your Honor.

20 MR. BENNETT: May I have control over this briefly?
21 Just briefly in opening, Judge, and I don't, like in trial
22 maybe, intend to go through in full detail of what the
23 documents will show, but I do want to at least provide context,
24 at least from the plaintiffs' perspective, as to what we're
25 doing, what we think we're doing here today.

1 The Court knows, of course, everyone knows that the
2 plaintiffs allege in Williams and Galloway and each of the
3 other cases that the defendant, that Matthew Martorello led the
4 creation of a business, of a business model that we have
5 characterized as rent-a-tribe, that is a business that paid a
6 small amount to a tribe, an Indian tribe, in order to provide
7 what Mr. Martorello has characterized as optics. That is to
8 provide that technical contracts between the lender and the
9 consumer would originate, with quotes around it, from the
10 tribal defendants rather than from Mr. Martorello.

11 You will have an opportunity today to hear from Mr.
12 Martorello. You will also have an opportunity to hear him
13 explain the paper trail that was left since 2011 in which Mr.
14 Martorello acted in a way that is very different than what his
15 declaration suggests.

16 That declaration -- the question the Court noted of
17 materiality would come later, but I think that the Court needs
18 to understand how material it was. The tribe, before this
19 Court, challenged the defendant -- jurisdiction over the tribal
20 defendants based on sovereign immunity, and the argument there
21 was that the tribe defendants were protected using the
22 *Breakthrough* factors from suit in this and other federal
23 courts.

24 And the basis there, the argument there, was that the
25 tribe really genuinely was trying to make money for its

1 citizenry, was attempting to engage in what it believed to be a
2 legitimate business for the benefit of the tribe and that
3 questions even of control, which the Fourth Circuit said maybe
4 didn't go as well for the tribal defendants as the other
5 *Breakthrough* factors, that the tribal defendants, on paper, had
6 control.

7 You will have an opportunity to see the
8 behind-the-scenes paper trail and, in fact, the benefit of
9 seeing it through today, given the positions that Mr.
10 Martorello and his corporate empire have taken about the
11 litigation and the rights of the tribe to settle and to set its
12 own interest rates, you'll have all that now.

13 But the Court needs to understand why we're here
14 today, why all this effort, why all this work has gone into
15 determining whether Mr. Martorello told the truth in his
16 declaration.

17 One of our esteemed colleagues --

18 THE COURT: Excuse me one minute.

19 MR. BENNETT: Yes, sir.

20 THE COURT: Your paper asserts that
21 misrepresentations were made by other people.

22 MR. BENNETT: Yes, sir.

23 THE COURT: Are you going to address that, too?

24 MR. BENNETT: Well --

25 THE COURT: You say, I think, Hazen made

1 misrepresentations, and you say that the -- the statements in
2 oral argument to the Fourth Circuit and in briefs to the Fourth
3 Circuit were misrepresentations as well. Are you saying that
4 all of the Fourth Circuit misrepresentations you are talking
5 about in your papers you're going to talk about here and that
6 they're tied to Mr. Martorello's misrepresentations, alleged
7 misrepresentations, or are they tied to the other people's
8 misrepresentations as well?

9 MR. BENNETT: Right. Your Honor, to the extent that
10 Mr. -- for example, the extent that Michelle Hazen said the
11 tribe did this, entered into this so that we could learn about
12 the business model, learn how it's done, learn about
13 underwriting, you're going to hear direct evidence today where
14 Mr. Martorello says, why would I possibly give you that
15 information so you can learn about this, you're not capable of
16 learning, and if you learned what would I have, what value
17 would I have.

18 You're going to hear that evidence, and it directly
19 confronts Michelle Hazen's declaration, but, at this stage, the
20 tribal defendants are not here. I think based on what has
21 happened after the settlement --

22 THE COURT: They know about the hearing.

23 MR. BENNETT: They do.

24 THE COURT: They chose not to be here. That's their
25 choices.

1 MR. BENNETT: Understood, Judge, but we're attempting
2 to streamline to the core part of what the dispute was -- or
3 what the misrepresentations were, Mr. Hurd, I think, suggested
4 appropriately in his argument before the Fourth Circuit.

5 (Audio played.)

6 THE COURT: Wait just a minute. Excuse me. Is this
7 video?

8 MR. BENNETT: It's just audio. But I don't have
9 control over the sound.

10 THE COURT: What's wrong with the sound?

11 MR. BENNETT: I think that it's the system
12 controlling --

13 THE COURT: You mean it's not coming or too loud?

14 MR. BENNETT: Too loud, I think.

15 THE COURT: Do you have it in writing somewhere?

16 MR. BENNETT: Yes, we will provide it in writing.

17 THE COURT: So at this point, the record will say
18 argument of Mr. Hurd at the Fourth Circuit what, pages what to
19 what?

20 MR. BENNETT: We will provide that for the record at
21 a break.

22 THE COURT: All right. So now you want to start
23 again?

24 MR. BENNETT: Yes, sir.

25 (Audio played.)

1 MR. BENNETT: You will hear as I go through Mr.
2 Martorello's declaration the evidence, you will see the
3 documentary evidence -- it's in the plaintiffs' exhibits -- and
4 understand that that core declaration, what Mr. Hurd
5 successfully used at the appellate level, Mr. Martorello's
6 declaration contains material falsities.

7 And the Court has to, of course, accept my view of
8 what a material falsity is for that to matter. The oath that
9 someone traditionally gives is to tell the truth, the whole
10 truth, and nothing but the truth, and I think that there are
11 different approaches to how some witnesses, maybe some lawyers,
12 approach the truth.

13 A material misrepresentation on the plaintiffs' side
14 means a statement that is made that is incomplete such --
15 includes statements that are made that are incomplete such that
16 they would mislead the reader or the listener.

17 And so to the extent, for example, if Mr. Martorello
18 testifies in his declaration that he and the companies that he
19 was involved in never collected any money from consumers and
20 the basis for that statement is because technically, on paper,
21 he was acting as a delegee of a tribal defendant, the tribal
22 defendant, on paper, was collecting even though all the
23 actions, the processes, the people were working for Mr.
24 Martorello's company.

25 You're going to hear as we go through the declaration

1 the history of this. The Court is probably maybe too familiar
2 at this point, and it really began -- if we take us to July of
3 2011, and this is where one of the core disputes that the Court
4 is going to hear begins.

5 Mr. Martorello, prior to July 2011, had worked for an
6 accounting firm -- he has an accounting degree -- KPMG, and he
7 learned about a company called ThinkCash, which then became
8 Think Finance, one of the leading tribal lenders, and Mr.
9 Martorello decided to get into the predatory lending business
10 himself.

11 His first really big company he operated as a
12 supposed Costa Rican entity. That is, Costa Rica was the
13 originator of his loans, and that was posing problems, and he
14 testified --

15 THE COURT: The country of Costa Rica was originating
16 the loans?

17 MR. BENNETT: Yes. So the consumers in America were
18 -- in the United States were borrowing from Costa Rica and,
19 thus, were not to be bound by Virginia law, for example. And
20 that wasn't working as well. I don't know why, travel,
21 logistics, language, but Mr. Martorello testified, contrary to
22 what you'll see in his declaration, that he had heard some good
23 things coming up with the law, his testimony was 2010 some good
24 tribal lending law, and that some big lenders such as Sequoia
25 and TCV -- and this is in our misrepresentation brief, his

1 actual deposition testimony -- that some big lenders were
2 getting involved in that. These were hedge fund lenders.

3 And so he then wanted to get involved. And this is
4 where the first dispute you'll see in his declaration will be,
5 and you will hear -- our first witness will be Mr. Merritt, and
6 we will put Mr. Merritt on for roughly 18 minutes.

7 Mr. Merritt is somebody who was deeply engaged in the
8 mechanical operation of a tribal lending business model. He
9 did not know LVD, he didn't know this tribe, and he hadn't been
10 contacted by anybody related to it. His testimony will be he
11 approached Mr. Martorello --

12 THE COURT: LVD is the Indian tribe of which the
13 tribal defendants in the case are -- to which they're related;
14 is that right?

15 MR. BENNETT: That's correct. And so Mr. Merritt
16 will testify that he went to this Online Lenders Alliance,
17 which was primarily a tribal lending organization, conference
18 in July of 2011 and sought out Mr. Martorello and met him so
19 that Mr. Merritt could try to interest him in some software, a
20 software deal unrelated to tribal lending but with respect to
21 these online loans.

22 Mr. Merritt's testimony, you'll see, is that Mr.
23 Martorello asked him to put Mr. Martorello in touch with some
24 tribes so he, Mr. Martorello, could enter into that field.

25 I think that, Judge, we'll leave opening and continue

1 with Mr. Martorello's testimony at the full history of this,
2 but that will be the first witness, and that will be the first
3 untruth that you hear that we focus on in Mr. Martorello's
4 declaration.

5 Mr. Martorello claims in his declaration, and you
6 will not see any evidentiary support for this other than the
7 declaration itself -- there's no documents that support this,
8 there's no witnesses that support it -- that somehow the tribe
9 came to the Online Lenders Alliance, sought out Mr. Martorello,
10 asked Mr. Martorello if it would be the tribe's vendor for a
11 new lending operation that LVD was attempting to set up, and
12 there is no evidence of that, and you will hear Mr. Merritt
13 give you an honest explanation.

14 You will also hear Mr. Merritt explain that
15 ultimately Mr. Merritt was involved, his own intermediary
16 company, advocating for Mr. Martorello in the creation of what
17 became the Red Rock lending businesses and, in fact, the
18 explanation for how it is that the tribal defendants were to
19 receive essentially a net of two percent -- that was after
20 write-offs and charge-offs and uncollectibles, etcetera -- and
21 how half of that money, half of the two percent of Mr.
22 Martorello's gross less these other net expenses, how half of
23 that money got paid to the middleman to set the deal up. So
24 the tribe received less than one percent of that.

25 You'll hear his short explanation on that, and then

1 we'll get right into Mr. Martorello and go through the
2 difference between the history of the Red Rock and Big Picture
3 lending models, the difference between the actual history and
4 the history that was presented to this Court and the Fourth
5 Circuit by Mr. Martorello in his declaration.

6 THE COURT: You're going to play depositions and have
7 Mr. Martorello testify.

8 MR. BENNETT: We're going to have Mr. Martorello
9 testify, but before we do that, we're going to play Mr.
10 Merritt, and I would cede the podium.

11 THE COURT: Mr. Scheff, you have an opening
12 statement?

13 MR. SCHEFF: Thank you, Your Honor. Your Honor, I'm
14 going to be extremely brief. Mr. Martorello's declaration,
15 according to the plaintiffs' brief, are materially -- has
16 material misrepresentations with respect to paragraph ten,
17 paragraph 17, paragraph 26, paragraph 36, paragraph -- excuse
18 me one second, Your Honor. Paragraph 43, paragraph 47,
19 paragraph 69, paragraph 100, paragraph 102, paragraph 105,
20 paragraph 107. There are other alleged misrepresentations in
21 the Hazen declaration and the Chairman Williams declaration.

22 As the Court noted, the tribal defendants are not
23 here today to defend their own statements. Your Honor, the
24 declaration that was provided by Mr. Martorello was not
25 intended to detail every piece of evidence in the case or every

1 minutia in the case. It was an overview of the way the parties
2 came together, the way the businesses were operated, who did
3 what, and what the present state of affairs were.

4 Like every case, Your Honor, this case is certainly
5 no different. There are factual disputes in what happened.
6 People remember things differently. Sometimes people remember
7 things the same way. And the fact that there are factual
8 disputes does not mean that there have been material
9 misrepresentations. And like every other case, there are
10 factual disputes in this case. And some of those are important
11 factual disputes, and some of them are unimportant factual
12 disputes.

13 With respect to the one item that Mr. Bennett
14 highlighted for the Court with respect to sort of who came to
15 who and how the sort of calculation, if you will, of the
16 tribes's share of the business would be provided, you're going
17 to hear Mr. Martorello's story about how that came together,
18 you're going to hear Mr. Merritt's. There are differences,
19 slight differences in what they say, but it doesn't mean that
20 anyone is providing material misrepresentations. It means that
21 people may remember things differently.

22 I would refer the Court, again, not to that this is
23 the be-all and end-all, but just as an example, Defense
24 Exhibit 16, an email not from Mr. Martorello but an email to
25 him in the early stages of 2011 talking about how the

1 calculation was to come together. It doesn't come from Mr.
2 Martorello, it comes from somebody else, a gentleman by the
3 name of Flint Richardson.

4 There are other documents which have been provided by
5 both sides which demonstrate indisputably that the tribe was
6 looking to get into online lending long before Mr. Martorello
7 ever came on the scene, as early as 2009, and, in fact, had
8 started another lending business before they even met Mr.
9 Martorello.

10 That's undisputed. The documents are undisputed on
11 that, and the witnesses are undisputed on that.

12 THE COURT: The documents you are talking about,
13 they're exhibits you have already filed?

14 MR. SCHEFF: Yes, Your Honor, that's correct.

15 THE COURT: And are the ones referred to on that
16 point referred to in your brief?

17 MR. SCHEFF: Yes, Your Honor, they are. Your Honor,
18 we have attached to our brief what we call a matrix. I think
19 it's Exhibit A. What it has is all the so-called alleged
20 misrepresentations, and it has all the exhibits adjacent to it
21 by number which we say support our view of what the evidence is
22 and the truth and accuracy of Mr. Martorello's deposition --
23 his declaration, excuse me.

24 So you'll hear Mr. Martorello live. He'll answer
25 whatever question anyone asks him. He'll be truthful, he'll be

1 credible, he'll talk about the story himself, all the different
2 issues.

3 We're going to play a number of different deposition
4 designations by video. We'll play Karrie Wichtman who was
5 counsel to the tribe and counsel to the lending businesses.
6 She knows what happened. She lived it every day. We'll play
7 some of Ms. Hazen, we'll play some of Rob Rosette who was
8 involved from the inception. We'll play some of Mr. Merritt as
9 well. There will be a number of different deposition witnesses
10 we play.

11 The number we play will depend on our time. We may
12 run short, and we may have to, obviously, cut back on what we
13 intend to play, but we'll play whatever we can as time permits.

14 THE COURT: Have you all worked out the objections so
15 there isn't any objections to what you are playing, do you
16 know, or where do we stand on that?

17 MR. SCHEFF: We have not.

18 THE COURT: We'll deal with that later.

19 MR. SCHEFF: It would seem to me, Your Honor, that,
20 again, the search here is for the truth, and Your Honor ought
21 to hear all the evidence. We're going to try to limit the
22 number of objections we make, period, whether anyone's
23 testimony, because we think the Court ought to hear it, the
24 Court ought to assess it in terms of making whatever
25 determination the Court is going to make.

1 THE COURT: All right.

2 MR. SCHEFF: Again, there will be factual disputes.
3 There's no question there's factual disputes. That's a far cry
4 from material misrepresentations, and, ultimately, a jury will
5 have to decide what the truth is. The jury will decide what
6 the merits are, the jury will listen to the witnesses, whether
7 it be live or in deposition, and they'll decide what happened.
8 But resolving factual disputes is different than material
9 misrepresentations. Thank you, Your Honor.

10 THE COURT: Thank you. Now, at this point in time,
11 do you know if there are objections to your proposed
12 depositions that you're going to play, or have they been
13 resolved?

14 MR. SCHEFF: I don't, Your Honor, but if you'll give
15 me one moment, I will confer with somebody at defense counsel
16 table to see what they can tell me about that. Thank you.

17 Your Honor, the objections have not been resolved.

18 THE COURT: When the deposition is being played,
19 you're going to stand up and make an objection to it at that
20 time; is that what you're going to do?

21 MR. BENNETT: Given the way the timing of the day may
22 go, there probably will be a break, and maybe it will help to
23 know which of the 22,000 lines the defendant wishes to bring
24 up. At this point, we don't have any idea. We've not --

25 THE COURT: I told you on the phone you all play what

1 you're going to play, and I'm going to rule on the basis of
2 objections unless you all -- on the basis of objections made
3 unless you all resolve things ahead of time, and I mean made at
4 the hearing so I can have the context.

5 MR. BENNETT: Yes, sir.

6 THE COURT: So I'll let you all talk during the
7 break. If you have some way of solving them, okay. I'm
8 surprised there wasn't an exchange of information ahead of time
9 after we had our conversation on the phone, but we didn't, so
10 I'll see what I can do.

11 Would you call GSA and ask them to find a way to cool
12 the room down a little bit. Tell them that it was 100-plus
13 degrees yesterday, it's going to be 100 today, and I need them
14 to get on it right away if you would, please, ma'am. Are you
15 ready with your first witness?

16 MR. BENNETT: We are, Your Honor. We would call
17 Matthew Martorello.

18 THE COURT: All right, Mr. Martorello.

19
20 **MATTHEW MARTORELLO,**
21 a defendant, called at the instance of the plaintiffs,
22 having been first duly sworn, testified as follows:
23

24 MR. BENNETT: And actually, Judge, this is my
25 mistake. I would not call --

1 THE COURT: Wait a minute, Mr. Martorello.

2 MR. BENNETT: I first intend to call Mr. Merritt by
3 video, just play his video dep.

4 THE COURT: Mr. Martorello, you can just sit there if
5 you want to. If you want to go back and be with your counsel,
6 you are free to, but you can just sit there.

7 THE WITNESS: Thank you.

8 THE COURT: This is the Merritt deposition.

9 MR. BENNETT: Yes, sir.

10 THE COURT: As soon as you start playing, the time
11 will begin.

12 (Discussion off the record.)

13 THE COURT: Who is this?

14 MR. BENNETT: This is Scott Merritt, Your Honor.

15 THE COURT: Are we ready, or what?

16 MR. DILLON: Your Honor, I think the issue just
17 resolved itself.

18 THE COURT: Thank you.

19 (Video deposition of Warren Scott Merritt played.)

20 MR. BENNETT: Thank you. Your Honor, for the record,
21 that deposition was of Warren Scott Merritt taken March 21st,
22 2019. We'll certainly provide a copy, paper copy for the
23 record.

24 THE COURT: Copy of what you played?

25 MR. BENNETT: Yes, sir.

1 THE COURT: And the copy will be what?

2 MR. BENNETT: The transcript.

3 THE COURT: What exhibit?

4 MR. BENNETT: It will be -- Judge, I would offer that
5 as Exhibit 1. I know we haven't -- 139.

6 THE COURT: Plaintiff's Exhibit 139.

7 MR. BENNETT: This was in the Williams case. The
8 first voice examining the witness was Michelle Alamo
9 representing Mr. Martorello, and the second voice was Andrew
10 Guzzo representing the plaintiffs. The third voice that was --
11 there was an objection. I don't know the name of the
12 gentleman, but it was somebody representing the witness. With
13 that, Judge, we could call Mr. Martorello.

14 THE COURT: All right. Mr. Martorello, the record
15 will reflect, has been sworn and, while that deposition was
16 playing, was sitting in the witness box.

17 MR. BENNETT: Your Honor and Mr. Martorello, you have
18 the plaintiff's exhibits there, but to make it easy for you, I
19 also have a copy of Exhibit 106 which is your declaration.
20 It's in the books, but this one you can do anything you'd like
21 with.

22 THE WITNESS: Thank you.

23 MR. BENNETT: Ms. Brown, may I have control over the
24 system, please. I'm sorry, I believe the witness was sworn --

25 THE COURT: Yes.

1 DIRECT EXAMINATION

2 BY MR. BENNETT:

3 Q Mr. Martorello, we've spoken by phone before and other
4 depositions, discovery depositions, for example. It's good to
5 see you again.

6 A You as well, sir.

7 Q You currently reside in Texas?

8 A Yes, Dallas, Texas.

9 Q And you have a college degree from what university?

10 A University of Illinois.

11 Q And when did you earn that degree and in what major or
12 what was your degree?

13 A It was 2002, and it was a major, double major in
14 accounting and finance.

15 Q And, at some point, you worked for different businesses,
16 but then you began to work for the accounting firm KPMG?

17 A That's correct.

18 Q What did you do for that accounting firm?

19 A I was in the transaction services group, so that involved
20 asset-based lending work.

21 THE COURT: Pull that microphone a little closer to
22 you.

23 THE WITNESS: I'm sorry, okay.

24 Q One of the clients that you were exposed to of KPMG was a
25 company called ThinkCash; is that correct?

1 A At the time, I think it was -- was it ThinkCash or Think
2 Finance? Maybe it was -- we were hired by Silver Point
3 Capital, and we were sent to figure out maybe some potential
4 breaches of contract or something that was going on with a
5 facility to Think Finance.

6 Q Yes, sir. And I appreciate that it's not your fault that
7 I volunteered to just do four hours, but my question to you was
8 that your client was ThinkCash, and you said you're not sure
9 whether it was ThinkCash or Think Finance; right?

10 A Yes, but it's ThinkCash. At the time, I think it was
11 ThinkCash.

12 Q And ThinkCash was a lending model that consumers, maybe
13 pejoratively, refer to as rent-a-bank. Have you heard that
14 expression, rent-a-bank?

15 A I've heard the expression.

16 Q But then Think Finance became a tribal lending business
17 model, an evolution of the ThinkCash entities.

18 A At some point years later, I believe that's -- well, I
19 mean, they service tribes through whatever platform they had.
20 I'm not aware of those details.

21 Q Now, you had -- prior to 2011, you had been engaged in
22 some internet lending operations of your own; correct?

23 A That's correct.

24 Q And what was the name of the entity that you associated
25 with Costa Rica?

1 A I don't know that I associate it with Costa Rica, but
2 there was a client of ours that was called Cape Side, LLC,
3 which was a Delaware LLC that was a lender under the d/b/a
4 peppercash.com, and it did business in Costa Rica and in
5 accordance with U.S. federal law but choice of law Costa Rica
6 for the loans.

7 Q And you were -- on paper, you were the servicer for this
8 other Delaware entity; right?

9 A In actuality, we were the servicer for the entity.

10 Q I understand. And, again, that was PepperCash?

11 A peppercash.com. I believe that was early 2010.

12 Q And, in 2010, you recall you previously testified that
13 there was -- quote, was a lot of favorable on point case law
14 that was coming out in 2010, close quote, regarding tribal
15 lending and that several large hedge funds like, quote, TCV,
16 all caps, and Sequoia, close quote, were providing capital for
17 those ventures. Do you recall?

18 THE COURT: The only question is do you recall
19 testifying that way.

20 A I did testify similar to that, I think.

21 Q And so in 2010 at least, you certainly were aware of the
22 issues of sovereign immunity in a tribal lending context?

23 A No, that's not correct.

24 Q You were aware of tribal lending business models
25 developing because of this, quote, a lot of favorable on point

1 case law?

2 A That's not correct.

3 Q You were not so aware?

4 A No. I became aware of the case law after, and I learned
5 of tribal lending at the OLA conference when I met Scott
6 Merritt.

7 THE COURT: At what lending --

8 THE WITNESS: At the Online Lending conference when I
9 met Scott Merritt.

10 Q And so when you testified in August 30th, 2018, that you
11 know -- quote, you know there was a lot of favorable on point
12 case law that was coming out in 2010, close quote, you were
13 testifying about what you learned about the online case law
14 coming out in 2010, or on point case law, you were testifying
15 what happened in 2011?

16 A I was putting in context the conference and the
17 conversations that, you know, Think Finance had just -- excuse
18 me, ThinkCash had just partnered with these institutional funds
19 and that there had been a bunch of case law that had come out.
20 I didn't know that at the time. I was putting that into
21 context of what was a big issue or talked about a lot at that
22 conference.

23 Q So prior to attending the Online Lenders --

24 THE COURT: So I understand, when you say it was
25 talked about a lot at that conference, are you talking about

1 lending through tribes, or are you talking about sovereign
2 immunity, or both?

3 THE WITNESS: I'm talking specifically about tribal
4 lenders getting into business, and there was some case law, and
5 Think Finance started working with tribes --

6 THE COURT: Does that include sovereign immunity for
7 the tribes as well in your conversations?

8 THE WITNESS: No. I don't think I was savvy enough
9 to know even the distinction or what that was. It was really
10 just kind of like talked about generally as the next tribal
11 gaming, and that was all kind of understood.

12 THE COURT: Do you remember what this favorable case
13 law was all about?

14 THE WITNESS: That spurred those discussions at the
15 conference, I couldn't recall off the top of my head.

16 THE COURT: Okay.

17 Q So you were not savvy enough to understand the legal
18 concepts or questions involved with tribal lending sovereignty?

19 A I disagree. I think what I meant was I wasn't aware of
20 tribal sovereignty at all, any more than any other layperson,
21 at the time that I was in the conference and met Scott Merritt.

22 THE COURT: You weren't aware of tribal immunity
23 other than as a layperson?

24 THE WITNESS: Correct.

25 THE COURT: Tell me what you know about -- what you

1 knew about tribal immunity at that time, then, of this
2 conference, Online Lenders conference with Mr. Merritt.

3 THE WITNESS: Well, I didn't have any experience with
4 tribes in any capacity. You know, the only thing I knew,
5 really, would be that tribes have casinos, just as any
6 layperson would, but I didn't have any knowledge or experience
7 or understanding about tribal sovereignty at all.

8 THE COURT: All right.

9 Q So you've heard Mr. Merritt. You've heard his testimony;
10 correct?

11 A I did.

12 Q How much money did Mr. Merritt make before that
13 deposition, roughly? How much did his company make by putting
14 you together with LVD?

15 A So because he was Tribal Lending Solutions, he partnered
16 with Tribal Lending Management, and that was the firm
17 associated with Rosette Associates. They got paid in
18 aggregate, from what I knew until very recently, \$960,000. His
19 portion of that, I don't know what that was, but that was an
20 arrangement they had together that I didn't even really have
21 any privy to.

22 THE COURT: You are using indefinite pronouns, and
23 you used "in the aggregate," and I don't know who "they" is or
24 what you mean by "in the aggregate." Who was it that got
25 \$960,000?

1 THE WITNESS: I believe it went to -- I believe it
2 went to TLM, Tribal Loan Management, and then what I wasn't
3 privy to was that there was a partnership to share that with
4 Scott's firm, TLS. When I said "they," I was referring to TLS
5 and TLM as a partner, as partners.

6 THE COURT: You don't know what Merritt personally
7 got from TLS.

8 THE WITNESS: I don't know what his participation
9 agreements were, no, I do not.

10 Q You know Mr. Merritt made money by putting you together
11 with the LVD; right? That's a fair assumption?

12 A Yeah, the tribe paid him.

13 Q And Mr. Merritt was heavily involved trying to create and
14 help create tribal lending models with his company; correct?
15 He's not a consumer advocate in terms of critical of tribal
16 lending; right?

17 A I'm sorry, can you repeat the question?

18 Q Sure. Mr. Merritt was a supporter of tribal lending and
19 the tribal lending business model; correct?

20 A Yes, I believe he said his company does pair together --
21 they are matchmakers, as he said.

22 Q You're unaware of any axe to grind; Mr. Merritt and you
23 were not involved in litigation or any conflict?

24 A No, not at all.

25 THE COURT: What do we need? I am connected.

1 (Discussion off the record.)

2 THE COURT: We're not keeping time on these --

3 MR. BENNETT: We're good now. I'm sorry, Judge.

4 THE COURT: I don't care if the people who are not
5 here don't see anything on the Zoom. Take it off the Zoom so
6 we can see what's going on in the courtroom. That's the key
7 thing. So forget the Zoom. The people in Zoom can stay on,
8 but we are not going to run the evidence through the Zoom. I
9 can't have that. We'll be here forever doing that.

10 MR. BENNETT: Right now I'm at Exhibit 1. It should
11 be on your screen also.

12 THE COURT: It's on the screen now.

13 MR. BENNETT: Yes, sir.

14 THE COURT: Is that this two-volume thing up here?

15 MR. BENNETT: It is. That's Exhibit 1, and I'm going
16 to go in order, generally in order.

17 THE COURT: Go ahead and ask your question. Can you
18 see it, Mr. Martorello?

19 THE WITNESS: Yes, I can, Your Honor.

20 THE COURT: And a hard copy is in that thing labeled
21 Volume 1 if you'd rather look at that. It's up to you.

22 Q Mr. Martorello, this is a letter of intent and exclusivity
23 agreement between Mr. Merritt's company and Mr. Rosette's
24 company. Have you seen this document before today?

25 A I've seen it through the discovery process.

1 Q But you're aware that such an agreement -- you were aware
2 before the lawsuit that such an agreement existed?

3 A I knew there was -- I didn't -- actually I didn't know
4 that TLS and TLM had partnered. My assumption was that he was
5 part of TLM.

6 Q In your declaration, which is document, Exhibit 106, if
7 you could turn to paragraph 14, please. You have a paper copy
8 as well?

9 A I do.

10 THE COURT: Paragraph 14?

11 MR. BENNETT: Paragraph 14.

12 Q Now, Mr. Martorello, you said that you learned that LVD
13 had identified you as a potential consultant. That was your
14 under-oath testimony; correct?

15 A Correct.

16 Q Let's get the background on this declaration. What type
17 of input did you have in the drafting of this declaration, you
18 personally?

19 A I had significant input.

20 Q What does that mean?

21 A I don't remember exactly three years ago, but I know that
22 I read it and probably wrote many of the --

23 THE COURT: Let's go back to square one. Did you
24 start off by writing the text of it on a piece of paper or
25 dictating it into a machine or typing it on a computer? At the

1 very first shot at it, is it yours or somebody else's?

2 THE WITNESS: I believe the first thing that I did is
3 I wrote the declaration in a computer.

4 Q Let's -- we can go up to the very first paragraph
5 actually, and the heading, the declaration says that this is
6 true and correct to the best of your knowledge, information,
7 and belief. And you understand that this declaration, and you
8 understood when you were drafting it and then signing it, that
9 you were to provide the truth, the whole truth, nothing but the
10 truth; correct?

11 A That's correct.

12 Q And turning to paragraph 14 again, under the heading LVD
13 approached Martorello in 2011, paragraph 14, you say, "In mid
14 2011, I learned that LVD had identified me as a potential
15 consultant." Do you recall that?

16 A I do.

17 Q But at that point, your claim would have been that was Mr.
18 Merritt?

19 A Mr. Merritt I viewed as LVD, as an agent of LVD who had
20 been seeking someone to help LVD for some time.

21 Q And, of course, you are aware a lot of paper has been
22 produced in this case; right?

23 A Of course.

24 Q But you have not -- you're not aware of any documentary
25 evidence that shows that LVD was trying to reach out to you as

1 a potential consultant.

2 A I wouldn't use the word me specifically, but they were
3 seeking lending operations to start and help with it since
4 2009, 2010 with Scott Merritt.

5 Q This says me. 14 says, "I learned that LVD had identified
6 me." So you say I wouldn't say me specifically. Does that
7 mean that you were incorrect in drafting paragraph 14?

8 A No. I think we just have a difference of interpretation.
9 LVD identified me as, you know -- Scott was working for LVD as
10 an agent, and he was seeking someone to provide services to
11 LVD, and when I met his partner, his partner had introduced me
12 to the concept of Think Finance, working with tribes, and I
13 said that was interesting. He asked me if I would like to
14 learn about it, and I said, okay. And he went and got Scott,
15 and Scott came over, and I don't recall him trying to sell me
16 software because he doesn't have online software.

17 Q Well, again, my question to you is, you said under oath
18 under penalty of perjury -- did you write the under penalty of
19 perjury at the top of this declaration?

20 A I don't think so.

21 Q But you know that you were accountable under penalty of
22 perjury if you made an untruthful statement here; correct?

23 A Correct.

24 Q You said in your declaration that you learned that LVD had
25 identified me, meaning Matt Martorello, as a potential

1 consultant, and now what you are saying is that what you recall
2 is that you spoke to somebody that said if you're interested in
3 tribal lending, why don't you talk to my partner Scott.

4 A I guess I don't associate those as being the same thing.
5 I'm saying that LVD had, at some point, identified me as a
6 suitable consultant for their business.

7 Q You're not testifying that that occurred, that they had
8 identified -- LVD had identified you at the point of your
9 attendance of this Online Lending Alliance conference?

10 A I think that's accurate if I heard you correctly. Can you
11 please repeat that?

12 Q Sure. How about this: When did you learn -- I'm sorry.
13 What is your testimony about the time, the month of 2011 that
14 LVD supposedly identified you specifically as a potential
15 consultant?

16 A Well, because I know Scott to have been an agent of LVD.
17 That's why I associate it with that moment.

18 THE COURT: So it's at the conference then.

19 THE WITNESS: Yes.

20 Q And, at that point, your testimony is that you understood
21 at that point that Scott was an agent, supposedly an agent of
22 LVD?

23 A Like I said, I didn't understand that at that time, but I
24 learned that later on.

25 Q Okay. And contrary to his testimony that you've just

1 watched.

2 A I think his testimony was very specific to TLS.

3 THE COURT: Excuse me a minute. Don't ask the
4 witness to comment on another witness's testimony.

5 MR. BENNETT: I'll withdraw the question, Judge.

6 THE COURT: And I don't want to hear what he has to
7 say about the other witness's testimony either. It's up to me,
8 as the finder of the fact, to judge the credibility without the
9 assistance of the lawyers or the witness. The lawyers may
10 argue the case.

11 MR. BENNETT: Yes, sir.

12 Q I want to -- I'll come back to a couple other paragraphs,
13 but if you could take a look at paragraph 17 of 106, paragraph
14 17 of your declaration.

15 A Okay.

16 Q Now, you said you were not involved in the creation of Red
17 Rock but made aware that Red Rock had been formed. Did you
18 type that in your draft?

19 A I don't know that I used those exact words, but it may
20 have evolved from what I wrote originally.

21 Q But you read this?

22 A Yeah. I'm sorry. You asked if I typed it.

23 Q I understand.

24 A If it was edited or if I originally typed it.

25 Q Separate question. You read and understood that you were

1 swearing under penalty of perjury that you were not involved in
2 the creation of Red Rock but made aware Red Rock had been
3 formed.

4 A Correct.

5 Q Now, where did the name Red Rock Lending -- Red Rock come
6 from?

7 A I asked the tribe what name -- what would the name of the
8 entity be, and they said, what would you like, what do you
9 like, and I said, I like Red Rock, and then they went with that
10 name.

11 Q Okay. Well, why don't we fill in that blank. On your
12 screen, and if you want to look at this otherwise is Exhibit 3.
13 Exhibit 3 is an email chain that was produced in discovery in
14 this case, Bates number ROS002 through --

15 THE COURT: You don't need to read all that.
16 Exhibit 3.

17 MR. BENNETT: Yes, sir, Exhibit 3.

18 Q And this starts, the email chain starts, the very last
19 page, August 9, 2011; is that right?

20 A Yes, that's accurate.

21 Q And at this point, you were heavily engaged with Scott
22 Merritt and Flint Richardson. Flint Richardson was his partner
23 in his company; correct?

24 A I don't know that we have been heavily engaged. I don't
25 remember when the first emails began.

1 Q Well, take a look at that last page. You have August 9th.

2 A So that may have been the beginning. I don't remember the
3 exact date, but that may have been the first sort of email.
4 I'm not sure.

5 Q You're not sure, but it was at least by August 9th.

6 A Yes, yeah.

7 Q And then over the course of this chain, working from the
8 back forward, the next page up says -- and this is sent Friday,
9 August 19th, from you to Flint Richardson, Scott Merritt, and
10 Rob Rosette, and this is your email asking is the tribe ready
11 to go live, and you wanted to talk about the detail of
12 origination occurring at the tribe, you wanted to discuss
13 operating bank account activity. This was your email that you
14 sent to Mr. Merritt, Mr. Richardson, and Mr. Rosette; correct?

15 A Yes. I wanted to go visit their operation and understand
16 what they were doing.

17 Q Okay. I want to go ahead and skip to the third page up or
18 from the beginning which would be at the bottom 695, and I can
19 call it out here for you.

20 At this point, this is your -- right in the middle of
21 the page, your email, August 23rd, 2011, "Is there an entity
22 name for the tribal LLC? Obviously an LLC that will only be
23 tied solely to us, with a unique name that doesn't expose our
24 relations if another lender tribe entity had problems." You
25 wrote that email; correct?

1 A Correct.

2 Q And then Mr. Richardson responded right above, "You can
3 name it"; correct?

4 A That's correct.

5 Q And then right above that, Mr. Merritt said, "I was about
6 to say the same thing"; correct?

7 A Yes, that's correct.

8 Q And then turning to, while we're on this -- well, let's
9 turn to Exhibit 2 real quick just so we complete that circle.
10 The first page of Exhibit 2, this is an email from you to
11 Mr. Rosette, Mr. Richardson, and Mr. Merritt again dated
12 August 23, 2011, and it says, "For the tribal entity, is it an
13 LLC or corp? I like the name Red Rock Tribal Cash, LLC, or
14 corp." Do you see that?

15 A I do see that.

16 Q And that, of course, that's how Red Rock came about. It
17 was your brainchild; right?

18 A No. They just asked me the name or what name I liked. I
19 actually asked them what name it was first, and I understood
20 they already had operations, but it couldn't be formed until
21 the tribe actually created the entity.

22 Q Okay. Well, you also have, and I'm showing you in that
23 same -- on your screen, the next paragraph says you plan to
24 have draft documents done by the end of the week. Who was Ryan
25 Bloom?

1 A I think he was a tribal attorney in Michigan.

2 Q And so you were going to have draft documents done and
3 then sent to Ryan Bloom for finalization; correct?

4 A That's correct.

5 Q So if you were going to send them to the attorney by the
6 end of the week, who was drafting the documents?

7 A I don't recall.

8 Q Look, we've got a lot -- we have whole binders here and
9 we'll go through all these, but it's fair to say that you were
10 very active, you were not passive in reviewing the documents
11 that were created in these various exchanges with Mr. Rosette
12 and LVD.

13 A So the draft documents here, I believe, are like a term
14 sheet or inducement agreement or a relationship document, not
15 to be confused with corporate formation or anything like that.

16 Q Okay. Let me take a look at Exhibit 5 for you.

17 THE COURT: Wait a minute.

18 MR. BENNETT: Yes, sir.

19 THE COURT: You weren't writing the draft documents
20 you are referring to there, were you?

21 THE WITNESS: No, no.

22 THE COURT: So were they legal documents?

23 THE WITNESS: I believe it was -- I'd like to --

24 THE COURT: You said it's a term sheet. What do you
25 mean by term sheet?

1 THE WITNESS: Well, I remember --

2 THE COURT: What do you mean by term sheet?

3 THE WITNESS: I think it was called an inducement
4 agreement and like a term sheet of what the business
5 relationship would be between my company and the tribe.

6 THE COURT: But clearly is contemplated that they be
7 executed. That means signed to you?

8 THE WITNESS: The term sheet, hopefully both parties
9 would sign the term sheet.

10 THE COURT: So it was to be executed?

11 THE WITNESS: If we could reach terms yes.

12 THE COURT: Was a lawyer drafting the documents for
13 you?

14 THE WITNESS: You know, I wouldn't have been drafting
15 them myself. I do know that.

16 THE COURT: What lawyer were you using at the time to
17 draft your documents?

18 THE WITNESS: In terms of the term sheet
19 specifically?

20 THE COURT: In terms of what you're talking about in
21 this paragraph. Who was it that drafted the document? It
22 wasn't you, it was a lawyer working for you. Who was the
23 lawyer?

24 THE WITNESS: Well, I'm actually saying -- I
25 apologize. This is a long time ago, but it says that I plan to

1 have the draft documents done by the end of the week. I don't
2 think that means I was actually drafting the documents. So I
3 wouldn't have done that.

4 THE COURT: You said that. I plan to have them done.
5 You were going to have them done by somebody. You said it was
6 a lawyer. Who was the lawyer who was drafting the documents
7 for you? Who was that?

8 THE WITNESS: I mean, I guess my point is I'm not
9 sure what I meant by "I plan to have the draft documents done."
10 I don't think I was saying that somebody had -- that I had
11 drafted documents or someone else had. I think what I was
12 saying was there were draft documents that had to be done. I
13 haven't read all this right now, but I don't know what those
14 draft documents were for sure, but I've testified, obviously,
15 that they provided me their servicing agreement, and I just
16 presumed that, you know, those were the draft documents that I
17 was maybe looking at and going to send to Ryan Bloom. That's
18 the best I can offer.

19 THE COURT: All right. If that's what you are
20 saying, that's what I'll interpret it to mean. I will tell
21 you, to me, when you say I plan to have the draft documents
22 done by the end of the week, you are taking responsibility for
23 them, or the other meaning is I hope that they are done.
24 Either way, somebody is drafting them because you said you
25 weren't. I want to know who it was that was drafting them

1 according to what you know, or do you not know?

2 THE WITNESS: Obviously, I'm sorry, I can't recall
3 exactly --

4 THE COURT: You can't remember the lawyer who was
5 representing you at this time?

6 THE WITNESS: That was Ryan Bloom. I do know that.

7 THE COURT: All right. So you, then, were drafting
8 the documents and going to send them to Bloom, your lawyer?

9 THE WITNESS: No.

10 THE COURT: You were going to get them from somebody
11 and send them to Bloom?

12 THE WITNESS: Yes. I either had them from somebody
13 or I was going to get them from somebody and send them to the
14 lawyer.

15 THE COURT: Okay.

16 Q Mr. Martorello, could you take a look at Exhibit 5 which I
17 also, I believe, have on your screen. Now, this is an email
18 from Flint Richardson to Karrie Wichtman who was a lawyer with
19 the Rosette law firm at this time; correct?

20 A That's correct.

21 Q And she and Rob Rosette were representing the tribe;
22 correct?

23 A Yes, that's correct.

24 Q And this also was sent to Ryan Bloom and you; correct?

25 A Correct.

1 THE COURT: Who is Flint Richardson?

2 THE WITNESS: He is one of the partners in TLM.

3 Flint, Rob Rosette, and Scott Merritt were partners as the
4 agents of LVD that we looked at that contract a little while
5 ago for.

6 THE COURT: TLM is Rosette's partnership?

7 THE WITNESS: That's correct.

8 THE COURT: And Wichtman was a lawyer for the tribe,
9 and she was in Rosette; is that right?

10 THE WITNESS: That's correct.

11 Q Now, you have -- this is an email that is a to-do list
12 with respect to the documents that were still being exchanged
13 to create Red Rock; is that correct?

14 A So Flint -- this is from Flint to Karrie. It seems like
15 there was an email that they had provided that Ryan had sent,
16 and then he lists what they were providing, the tribe's
17 constitution, its lending code, its ordinances, its bank stuff,
18 EIN.

19 Q So at the top, this was sent to your lawyer, Ryan, and the
20 tribe's lawyer, Karrie; correct?

21 A Yeah, that's correct.

22 Q And it says, "Matt has indicated that the intended tribal
23 LLC should be established as Red Rock Lending, LLC, a tribal
24 entity"; correct?

25 A Yes.

1 Q And then your lawyer and Karrie had to provide certain
2 documents including the tribe's constitution, ordinances, and
3 any resolution as well as a draft of the Red Rock Lending
4 organization documents and operating agreement for Ryan to
5 review prior to having it approved by LVD; correct?

6 A Yes. I believe Ryan requested these items.

7 Q Your lawyer requested to review the Red Rock -- the
8 documents that were going to create the Red Rock Lending
9 entity?

10 A Right, among the other things, yes.

11 Q So when you, in paragraph 17 of your declaration -- and we
12 can go on. We've got stacks of these. I'm burning through my
13 time --

14 THE COURT: Why don't you do this: Why don't you
15 just ask the question, not going on. If he continues to
16 ramble, I'm going to extend the time.

17 MR. BENNETT: Yes, sir.

18 THE COURT: Either he answers directly and I won't
19 have to extend the time, but if he continues to ramble and
20 reframe questions, I'm going to extend the time. I want to get
21 to the bottom of things here.

22 MR. BENNETT: Yes, sir.

23 THE COURT: It doesn't help get to the bottom of
24 things if you are telling him how much evidence you've got. He
25 doesn't need to know that. All right, let's go. Start your

1 question.

2 Q Mr. Martorello, in paragraph 17 of your declaration when
3 you swore under penalty of perjury that you were not involved
4 in the creation of Red Rock but made aware Red Rock had been
5 formed, now, today, you know that to be an untruthful
6 statement.

7 A No. I think I just disagree with you what the creation of
8 Red Rock is.

9 Q Okay.

10 A For example, the way I've thought of it is, you know, I
11 can provide a name for my son's child, but I don't create the
12 child. The only one who can create the entity and the business
13 is the tribe. So whatever advice they asked me for, if I give
14 them a name or we look at due diligence documents to consider
15 partnership, it's -- that doesn't do creation. That isn't the
16 formation, and this was all in the context of the *Breakthrough*
17 factors which was what was the --

18 MR. BENNETT: Objection; not responsive to my
19 question, Judge.

20 THE COURT: He's also not asking you about creation.
21 He's asking you about another word in the sentence, a verb.
22 He's asking you about the verb, involved in the creation.

23 THE WITNESS: Okay, my mistake.

24 THE COURT: What he wants to know is, were you
25 involved in the creation of it no matter how you were involved.

1 He can get into the next question, he'll ask you how if the
2 answer is yes. If the answer is no, then the answer is no. Do
3 you understand?

4 THE WITNESS: I believe so.

5 THE COURT: Were you involved in the creation of Red
6 Rock?

7 THE WITNESS: No.

8 THE COURT: All right, that's the answer.

9 Q Did your lawyer -- was your lawyer's review of the
10 documents creating Red Rock -- the organizational documents
11 prior to their being submitted to LVD's counsel for approval,
12 was your lawyer authorized by you to be involved in that
13 process?

14 A I'm sorry again. What process?

15 THE COURT: The creation of Red Rock.

16 THE WITNESS: No. We didn't participate in the
17 creation of Red Rock.

18 Q Paragraph 19, you swore under penalty of perjury that you
19 personally reviewed Red Rock's articles of organization for Red
20 Rock, and that's something that was true; right? You did
21 personally review Red Rock's articles of organization; correct?

22 A That's correct.

23 Q But, in fact, you reviewed Red Rock's -- you and/or your
24 lawyer reviewed Red Rock's articles of organization before
25 those articles were submitted to LVD for approval?

1 A That's correct.

2 Q Now, continuing in your declaration here, paragraph 22,
3 you state, "As a consultant to Red Rock, I made suggestions and
4 offered advice to Red Rock's co-managers." Do you see that?

5 A I do.

6 Q And you never made a decision on behalf of Red Rock, or no
7 company you manage ever made such decisions; correct?

8 A Correct.

9 Q That was your testimony?

10 A Yes.

11 Q Let's take a look at Exhibit 3, please. I'm sorry,
12 Exhibit 4. So Exhibit 4 on the second page is an email
13 exchange between you and Richardson, Merritt, and Rosette dated
14 August 26, 2011. Do you see that?

15 A Yes.

16 Q And there's highlight, but this highlight was already in
17 here when we got it, but do you know who did the all caps in
18 the highlight?

19 A I believe -- I believe that was Flint.

20 Q And you reviewed this document. Was this responding to
21 questions that you had?

22 A It seems so, yes.

23 Q And if you'll take a look at the third page, do you see in
24 the highlighted "No representatives from the tribe are the
25 LLC's managers. The servicer Bellicose operates the business

1 completely."

2 A I see it.

3 Q And that's what you understood at that point, that you
4 were structuring into the Red Rock deal?

5 A I don't know -- no, I don't think that's what I
6 understood.

7 Q Not what you understood.

8 A I was asking questions at that time. I didn't have an
9 understanding yet.

10 Q Okay.

11 THE COURT: I'm seeing in some instances where people
12 send an email, and then when somebody answers a question that's
13 embedded in an email, they type an answer right there, and
14 sometimes it's in different type. Is that what was going on
15 here on page three do you know?

16 THE WITNESS: Yes.

17 THE COURT: Who was it that was answering -- who put
18 the question, "Does it mean that Bellicose is the manager,"
19 etcetera, in the lower case? Who did that?

20 THE WITNESS: I'm the one asking the questions, and
21 then -- I'm the lower case, and then the upper case is all
22 Flint Richardson.

23 THE COURT: So Flint Richardson is answering that
24 question. Who, again, is Richardson?

25 THE WITNESS: He was one of the TLM partners.

1 THE COURT: Rosette group.

2 THE WITNESS: Yes.

3 Q I have you called out at paragraph or page four --

4 THE COURT: Of what?

5 Q Of Exhibit 5, page four of Exhibit 5, which is also on
6 your screen called out, and you ask can you elaborate.

7 THE COURT: Mr. Bennett, excuse me. My copy of
8 Exhibit 5 is one page --

9 MR. BENNETT: Sorry, Exhibit 4.

10 THE COURT: So you are on page four --

11 MR. BENNETT: Of Exhibit 4, I'm sorry.

12 THE COURT: Do you have that, Mr. Martorello?

13 THE WITNESS: Yes, sir.

14 Q You were told the design of this business was -- and,
15 again, it's all capped, that "your entity would be the servicer
16 for the lending operations. The LLC managers are managers of
17 the LLC entity on behalf of the tribe but aren't involved in
18 the business." Is that correct?

19 A That's what this says here.

20 Q In fact, that is how the business ultimately operated,
21 with the managers were not actively involved in the business.

22 A That is not correct.

23 Q That is not correct. All right. So -- now, when Red Rock
24 was created, what was the servicing entity at that time?

25 A Well, there was none yet until months later.

1 Q Who handled the servicing when Red Rock started operation
2 and when loans were being made in Red Rock's name?

3 A That would have been Bellicose VI, Inc.

4 Q That was your company?

5 A Yes.

6 Q And then at some point, it became Sourcepoint.

7 A Yes.

8 Q And at that point when either as Bellicose or Sourcepoint,
9 what intellectual property did you give to LVD's co-managers in
10 terms of underwriting?

11 A Throughout the relationship you mean?

12 Q Right now -- yes, with respect to the relationship between
13 Red Rock and Bellicose and Sourcepoint, what actual tangible,
14 by name and detailed description, underwriting intellectual
15 property did you give them?

16 A Well, throughout the process, every recommendation that we
17 would make, they would receive. So that could include
18 statements and procedures, how to do the verifications, the
19 underwriting criteria, and the systems and things. So any of
20 the knowledge that we're transferring to them, they had to
21 implement at their call center, and so they received that.
22 They owned it, and that was their property we were creating for
23 them.

24 Q Let's talk about that. So when you say --

25 THE COURT: Wait just a minute. You're saying what

1 you told them. He's asking you what did you give them
2 physically. What did you hand to Red Rock? What did
3 Bellicose, Sourcepoint, whoever it was, actually, by way of
4 intellectual property, physically hand to Red Rock; any? If it
5 was, what is it?

6 THE WITNESS: Well, I believe it would be like the
7 scripts and -- the papers that speak to those things I
8 mentioned.

9 THE COURT: What are you talking about?

10 THE WITNESS: So, for example, certain leads or loans
11 would go through a certain system or process. So we had to put
12 that on paper and then send it to them, discuss it with them,
13 and if they accepted the recommendation, they would own the
14 process and that was their paper and process.

15 THE COURT: Are you saying, though, that Bellicose
16 was processing the loan and then send it to Red Rock, and if
17 Red Rock thought it was okay, then Red Rock got all of the
18 information that you had sent along with them to help them
19 evaluate the loan?

20 THE WITNESS: No, I don't think that's what I'm
21 saying.

22 THE COURT: I'm utterly baffled by what you are
23 saying. So think about it over the 20-minute recess, and then
24 we will come back and talk about it again. We'll be in recess
25 for 20 minutes.

1 (Recess taken.)

2 THE COURT: All right, Mr. Martorello I remind you
3 you are under the same oath that you took earlier in the day.

4 THE WITNESS: Yes, sir.

5 THE COURT: Mr. Bennett.

6 Q Mr. Martorello, regarding the creation of Red Rock and
7 then, I guess, later the other tribal entities, you are aware,
8 and I think in paragraph 16 of your declaration you noted that
9 you reviewed the tribal council resolutions relating to the
10 lending entities Red Rock; right?

11 A Yes, that's correct.

12 Q And, in fact, in that time period when the tribe began to
13 implement the Red Rock program, you had hired a new lawyer to
14 help you; correct?

15 A That's correct.

16 Q And who was that?

17 A I hired Jennifer Weddle of Greenberg Traurig.

18 Q And she has a background in tribal lending?

19 A Yeah, Native American law generally and tribal lending.

20 Q If you take a look at Exhibit Number 10, please. These
21 are sum of the emails we were able to get from Mr. Rosette's
22 subpoena. This is an email from the tribe's lawyer, Ms.
23 Wichtman, to your lawyer, Ms. Weddle; correct?

24 A Correct.

25 Q And it states that Ms. Wichtman is sending a copy of the

1 proposed tribal resolution for her review prior to the next
2 meeting regarding the execution of Red Rock documents, the next
3 meeting of the tribal council; correct?

4 A That's correct.

5 Q And the second to last sentence says, "Please note that
6 there were changes made to your form resolution based upon
7 input and request of the tribal council"; do you see that?

8 A I do.

9 Q And this was customarily the way that these resolutions
10 that had implications for the Red Rock and then later the Big
11 Picture businesses operated; that is, the resolutions were sent
12 to you or to your representatives before the tribal council
13 actually voted on them.

14 A That was not customary.

15 Q It was not customary. And so when it says Ms. Weddle's
16 form was modified, she had submitted a form resolution for the
17 execution and transaction that became Red Rock that the tribe
18 then felt it should edit; correct?

19 A That seems to be what this says here.

20 Q Now, when Red Rock began, what assets did Red Rock receive
21 from Bellicose and then Sourcepoint? Like what actual assets,
22 and specifically I want to point you in your declaration to
23 paragraph 35. Paragraph 35, which says in addition to whatever
24 the cash distributions were, that LVD received and retained the
25 significant additional economic value of ownership of all

1 intellectual property developed under the agreement by
2 Sourcepoint. Did you write that, or did your lawyers write
3 that?

4 A I believe I wrote that.

5 Q So your statement under oath is that Sourcepoint gave LVD
6 all intellectual property developed under the agreement with
7 Sourcepoint. That's how I read it. Am I wrong?

8 A Anything that was theirs developed through the agreement
9 would be their intellectual property, yes.

10 Q So underwriting criteria, the formula, the special sauce,
11 LVD received that; it was given to them, they had actual
12 possession and ownership over all that special sauce, secret
13 sauce?

14 A Not the secret sauce related to our pre-qualified leads
15 but the secret sauce related to their underwriting
16 verifications.

17 Q All right. Well, tell the Court what underwriting
18 verifications are because it sounds a lot more complicated.
19 Explain to me what that is.

20 A Sure. So they have a set of underwriting criteria which
21 is generally, you know, age, income, you know, formulas for
22 what they want the loans to look like based on what the data
23 is, and then it comes in, and then the call center will go
24 through certain processes to verify, you know, bank, are they
25 employed, is it really their bank account, is it fraudulent,

1 things like that.

2 That's part of their underwriting process. That's all
3 their intellectual property and then, of course, there's the
4 final process to do the final verifications on the reservation
5 which is theirs as well, and separately, what I'm saying is
6 different. Pre-qualified leads is our formulas for how we do
7 our algorithms to try and find leads that hopefully fit into
8 their box of processes like a lead provider would do.

9 Q So you gave all that computer code and all those formulas
10 to a tribal member to own, possess, and keep?

11 A I didn't give them our pre-qualified stuff, but I gave
12 them their statements and procedures, verification procedures,
13 and the underwriting box.

14 THE COURT: What's this pre-qualified stuff that you
15 are talking about?

16 THE WITNESS: Pre-qualified leads, kind of like when
17 you get pre-qualified for a mortgage, will run a bunch of data
18 to determine if you would be eligible, and then we'd solicit,
19 you know, a direct mail campaign or something, and then you
20 might apply if you're interested. So we would generate leads
21 like marketing through analytics and such.

22 THE COURT: And so the algorithms you developed for
23 pre-qualified leads, were they developed under the agreement by
24 Sourcepoint?

25 THE WITNESS: No. That was how we provided that

1 service to them. Our agreement required us to provide --

2 THE COURT: That wasn't what I asked you. I asked
3 you a different question. Were those algorithms that you are
4 talking about respecting the pre-qualified leads developed
5 under the agreement by Sourcepoint? Read your affidavit,
6 paragraph 35.

7 THE WITNESS: Okay. I've read it again.

8 THE COURT: Were the algorithms that you spoke of for
9 the pre-qualified leads developed under the agreement by
10 Sourcepoint?

11 THE WITNESS: No.

12 THE COURT: And they were not given to the tribe.

13 THE WITNESS: Correct.

14 Q So what you are referring to when you discuss the
15 pre-qualified leads is the leads themselves.

16 A Correct.

17 Q That's what you are referring to as the significant
18 additional economic value of ownership of all intellectual
19 property developed under the agreement by Sourcepoint, is the
20 leads themselves?

21 A No.

22 Q All right. The leads themselves is one of those.

23 A No, the leads is the pre-qualified leads that I was
24 talking about.

25 Q So the pre-qualified leads, that's the intellectual

1 property to which you are referring.

2 A No. Maybe I'm not explaining this well, but the
3 pre-qualified leads, the way we generate those is our
4 intellectual property. Then we provide the leads themselves
5 which is, I think, what you're saying. So that becomes the
6 customer for them which is their intellectual property, is the
7 customer list, so it becomes theirs at that point.

8 THE COURT: Excuse me just a minute. Let's go back
9 to your affidavit and try it another way. What intellectual
10 property was developed under the agreement by Sourcepoint that
11 is referred to in paragraph 35 that was given by Sourcepoint to
12 the tribe? What was it?

13 THE WITNESS: So that would be all of the procedures
14 for how to verify the pre-qualified lead when they got it.
15 That -- meaning how the call center would do their analysis for
16 bank verifications or employment verification, how the loan and
17 rate and term should match up to two different types of
18 pre-qualified leads, and, you know, I'm probably missing some
19 processes, but the compliance management system, for example.
20 Those would be examples of things that we would have developed,
21 recommended for them, and then once they adopted it, that was
22 theirs.

23 THE COURT: All right.

24 Q So the algorithms, the analytics, the machine from which
25 business was generated, that was not given to the tribe.

1 A Correct.

2 Q The actual output, that is, here's the leads, and not all
3 leads but the leads that ultimately become their customers,
4 that intellectual property is the intellectual property that
5 you are referring to?

6 A I think that sounds correct.

7 Q Now, everything else you kept, and you guarded.

8 A Our IP, how we did things --

9 Q Your intellectual property --

10 THE COURT: Wait a minute. You are talking at the
11 same time, and I can't hear you and the court reporter can't
12 hear you. Go ahead, start again.

13 Q Everything else, all of the analytics, the --

14 THE COURT: He has already answered --

15 Q You retained and never gave that to the tribe?

16 A Our systems and how we did our analytics and things, sort
17 of how we make the sausage, that's our IP.

18 Q Okay. So with the intellectual property that you gave,
19 that Sourcepoint gave to the tribe, the tribe could not operate
20 a business with that. They didn't have -- they didn't know how
21 to cook the food, they just had the food; right?

22 A I don't know that I would agree with that. They could get
23 leads from other sources, for example.

24 Q Okay. But the analytics, the core of what made your
25 business special, what you were selling and charging 98 percent

1 less some expenses, that was the analytics that you marketed as
2 being so valuable.

3 A That was the most valuable thing that we had.

4 Q Now, I want to take a look at a few of these types of
5 intellectual property that you -- again, referring to 35, and
6 this is my apology, but I'm reading it, and it says "of all
7 intellectual property developed under the agreement by
8 Sourcepoint."

9 So I want to, in that context, talk about some of your
10 emails. Take a look at Exhibit 13. So Exhibit 13 is an email
11 dated November 13th, 2011, from Mr. Richardson to you. And
12 it's following up, apparently, a phone call suggesting that you
13 should discuss these issues with GT. GT was the law firm, Ms.
14 Weddle's law firm; correct?

15 A That's correct.

16 Q Greenberg Traurig?

17 A Yes.

18 Q And one of the items was intangible asset ownership. You
19 were going to talk to Jennifer, the lawyer, your lawyer, about
20 the language that they have relating to you obtaining ownership
21 of the intangibles, specifically domain names, if you're no
22 longer the servicer. Do you see that?

23 A Yes.

24 Q In fact, that ultimately made it into your deal with Red
25 Rock or LVD. If LVD no longer used you and your companies as

1 the servicer, the domains for these lenders reverted back to
2 you.

3 A I'm not sure that that was ever put into the final deal.

4 Q All right. Well, let's take a look at Exhibit 89 -- no,
5 let's take a look at Exhibit 56 and 57. Exhibit 56, this is an
6 email. The last of the emails was dated August 26th, 2014, and
7 this was an exchange occurring between you and Ms. Wichtman in
8 her capacity as a lawyer for the tribe; correct?

9 A That's correct.

10 Q And I want to turn to the second page of the exhibit which
11 is an email from you on August 26th which I think is also on
12 your screen.

13 A Yes.

14 Q Can you read that first sentence.

15 A "We respectfully opt to continue to keep any details of
16 SPVI IP including DM explicitly for internal eyes only, both
17 for the protection of our business and maintaining integrity of
18 an acquisition of the SPVI business."

19 Q All right. Now, that IP, and, in fact, you -- the IP is
20 intellectual property; correct?

21 A That's correct.

22 Q Now, if you'll turn to the first page of that same
23 exhibit, and then this is Ms. Wichtman responding to your
24 email. And she says, "I wasn't recommending that SPVI disclose
25 its secret sauce but only that SPVI be willing to explain to

1 the co-managers what exactly they are approving." By the way,
2 the process -- am I right the process was that Sourcepoint
3 would make recommendations, and I'm doing quote unquote for the
4 record, quote unquote recommendations to the co-managers of the
5 tribal lending entity; right?

6 A Co-manager or CEO, yes. For example, Shelly was both, in
7 both capacities.

8 Q Okay. So they would make the recommendation to them, and
9 then the, in this case Shelly which is Michelle Hazen; correct?

10 A Correct.

11 Q So Ms. Hazen would then approve, and, for the record, I'm
12 using quotes around the word approve. So Ms. Hazen would
13 approve what SPVI was asking Red Rock to approve; correct?

14 A She could approve or reject, but if it was going to be
15 implemented, she would approve.

16 Q So Ms. Wichtman, in this exchange, was emailing you asking
17 for some details about what was being -- about the secret
18 sauce. You responded you're not going to share the
19 intellectual property, and then she responds with this
20 sentence: "I wasn't recommending that SPVI disclose its secret
21 sauce but only that SPVI be willing to explain to the
22 co-managers what exactly they are approving." Do you see that?

23 A I do.

24 Q And this was August of 2014; correct?

25 A Correct.

1 Q Now, one of the secret sauce items that you guarded was
2 the vendor relationships with the third-party companies that
3 Sourcepoint would use to generate leads, for example; correct?

4 A Some of the vendor relationships which were related to
5 pre-qualified leads, yes.

6 Q Okay. In fact, the top of this email you address that
7 very point which is your email back says that the vendor
8 contracts and formulas used are very closely guarded internal
9 IP and entirely unobtainable by the clients. Do you see that?

10 A Yes.

11 Q "The only reason we moved elements to be direct with
12 client was because the risk of working with tribal clients was
13 more and more dangerous and optics become very important." If
14 there is -- the last paragraph, "If there's a fundamental
15 disagreement on IP ownership, though, I imagine the elements I
16 mentioned required in a deal are far from obtainable." What
17 did you mean by that sentence?

18 A Well, she was making the point basically that if -- if she
19 was making the point that she owned our secret sauce, then they
20 effectively already owned our business, and there would be
21 nothing for us to sell to them.

22 Q And, in fact, therefore, you disagreed when you suggest in
23 response, your point is that the analytics, the secret sauce,
24 the vendor relationships, those were not given or made
25 available to Red Rock, those still belonged to you and your

1 companies; correct?

2 A They were at some point, which I mention I think here that
3 we did do that, because we had to -- the whole industry got
4 really -- they wanted full clarity on the life cycle of a
5 consumer, meaning from the website through to origination or
6 debt collection agency or anything. So all the vendors wanted
7 to go direct, and they didn't want us involved in pre-qualified
8 leads by way of contract.

9 Q And you wanted to get your name out of it because of the
10 impending regulatory and litigation risks that you saw at this
11 time.

12 A I was definitely interested in not being mischaracterized
13 as the lender.

14 THE COURT: Was that an answer yes or no?

15 THE WITNESS: I don't remember the exact question.

16 THE COURT: From now on, answer yes or no, and if you
17 then want to say something, okay, but any other answers that
18 aren't yes or no I'm not going to pay much attention to because
19 I can't follow what you are saying.

20 You have -- your practice seems to be to try to
21 restate the question or to say something that's not even
22 remotely implicated by the question, and, therefore, it's
23 confusing to the record and to me, and it's not helpful to me
24 to understand things in that fashion.

25 Ask the question again. Answer it yes or no. If

1 there needs to be an explanation, your lawyer can call for it.

2 Go on.

3 THE WITNESS: Okay.

4 Q On your screen, I believe, is Exhibit 57, and I've called
5 out on page one the sixth paragraph down. This document itself
6 is an email from you to Ms. Wichtman dated August 26, 2014;
7 correct?

8 A Correct.

9 Q And, at this point, you're, I guess, negotiating or
10 discussing with Ms. Wichtman the terms of some future sale to
11 turn over your servicer business?

12 A At this point, we were discussing a sale, yes.

13 Q And so the paragraph I've called out says, "The servicer
14 is a servicer, so the IP it builds is its own, and for the use
15 of its client (multiple) which it services, or has serviced
16 from even the pre-LVD days." By the way, you are referring to
17 you, to your company, as the servicer in that sentence; right?

18 A Correct.

19 Q Now, at the top of this same email, in the first -- or in
20 the third paragraph -- by the way, do you recall this email
21 that you wrote?

22 A No, but I'm familiar with it because I've seen it in the
23 production a few times.

24 Q You are referring -- this is referring to a transition
25 from the Red Rock time period to some future time period or

1 future structure that we now know became Big Picture; right?

2 A I believe that's correct.

3 Q So it's fair to say that when you are describing how
4 things are going to be under the Big Picture structure in terms
5 of what information is going to be shared or what control is
6 going to be provided to the tribal managers, that it would
7 be -- that with respect to Red Rock, there would have been less
8 sharing and less control than after the servicer is actually
9 owned by the LVD?

10 THE COURT: I don't have any idea --

11 MR. BENNETT: That was horrible.

12 THE COURT: -- and I can't imagine --

13 MR. BENNETT: Every third word. If you heard every
14 third word, it was a great question, Judge.

15 THE COURT: Cut it down by two-thirds then.

16 Q So, here, in this email, you write, "The seller will have
17 to keep a final say-so in business decisions." That means
18 whatever deal you're going to agree to with the new Big Picture
19 structure, one thing that you were going to insist on was that
20 the seller -- that's you; right?

21 A Yes.

22 Q The seller will keep a final say-so in business decisions;
23 right?

24 A Correct.

25 Q So obviously that means that as of the time of writing

1 this email, the seller, you, believed you had the final say-so
2 in business decisions.

3 A No.

4 Q No. Now, continuing back to your declaration --

5 THE COURT: Stop just a minute. What did you mean by
6 business decisions in that sentence? What business decisions
7 are you talking about?

8 THE WITNESS: Well, at that point, it was very
9 premature because we hadn't gotten to documents, and I didn't
10 know yet what business decisions I was talking about, but I
11 just meant as a lender, interested in making sure the
12 collateral and IP were maintaining its integrity. There had to
13 be some sort of, you know, control to make sure it wasn't just,
14 you know, degraded or trashed or something like that, but I
15 hadn't really thought through what that would mean yet at this
16 point in time.

17 THE COURT: So you didn't know what business
18 decisions meant in that sentence?

19 THE WITNESS: Correct.

20 Q So that email, when you wrote that email, the seller you
21 are referring to was Sourcepoint; correct?

22 A Eventide ultimately, but the entity sold was Sourcepoint.

23 Q Now, continuing in your declaration, I want to talk about
24 the bank accounts. So paragraph 27 of your declaration and 28,
25 you say, "Red Rock provided companies Bellicose and Sourcepoint

1 certain limited access to bank accounts." Do you see that?

2 A Yes.

3 Q So there was an operating account that was in the name of
4 Red Rock; correct?

5 A Correct.

6 Q Later there was an operating account in the name of Big
7 Picture; correct?

8 A Yes, there was.

9 Q And in the operating account, what money went into that
10 operating account, the Red Rock operating account?

11 A Anything borrowed from creditors and any inbound revenue
12 or loan payments from the consumer loans.

13 Q And who is Brian McFadden?

14 A He is the CEO of the Ascension Technologies.

15 Q At the time of this email -- I'm sorry, at the time of Red
16 Rock, rather, and of Sourcepoint, what was Brian McFadden's
17 role?

18 A He was the -- just before the sale, he was the president
19 of Bellicose Capital.

20 Q And then who was Simon Liang, L-i-a-n-g?

21 A Simon was the controller at that time and then
22 subsequently the controller at Ascension.

23 Q But prior to that, he worked for your companies?

24 A Yes.

25 Q And so the limited access to bank accounts, you actually

1 had complete access, your employees, your companies, Bellicose
2 and Sourcepoint, had complete access to the operating account
3 for Red Rock; correct?

4 A Within the scope of the deposit account control agreement,
5 yes.

6 Q There's a word there that you put for a reason. You say
7 certain limited access to bank accounts, and I'm challenging --
8 I'm asking you, in fact was not certain limited access, it was
9 complete access to the bank accounts; correct?

10 A There were accounts that I wasn't on, and I don't know if
11 that's what I was talking about at the time I wrote that. The
12 operating account specifically I had complete access to.

13 THE COURT: Whose operating account, Red Rock or
14 Bellicose?

15 THE WITNESS: Red Rock.

16 THE COURT: Big Picture?

17 THE WITNESS: Red Rock.

18 Q And that meant that you and your employees could write
19 checks out of that account if they wanted.

20 A I actually think we had a restriction on BillPay from the
21 bank -- I'm sorry, we didn't have checks. We were allowed to
22 do BillPay.

23 Q But you could take money out --

24 THE COURT: What does that mean, allowed to do
25 BillPay?

1 THE WITNESS: So BillPay is like an online version of
2 writing a check where you go in and type it, but they didn't
3 give us a checkbook to physically sign.

4 THE COURT: So, in essence, you could write checks on
5 the account, and you did it through a technology called
6 BillPay?

7 THE WITNESS: Yes, for some period of time, and then
8 they terminated that and only allowed us to do wires.

9 THE COURT: Wire transfers.

10 THE WITNESS: Yes.

11 Q And by "they," you mean the bank.

12 A The bank.

13 Q Now, again, before Big Picture, Brian and Simon were
14 signators on that account; correct?

15 A Yes, that's correct.

16 Q And who were the co-managers for Red Rock?

17 A At what point in time?

18 Q At any time. How about if I give you the second question.
19 Can you name any of the managers of Red Rock, the tribal
20 employees, that had signing capability, could use BillPay to
21 take money out of the account in the manner that you and your
22 designees or delegees could?

23 A They could do that. Shelly could do that, Chairman
24 Williams could do that, and Craig Mansfield -- those are the
25 managers over the course of the time -- if they were to remove

1 me from the bank account, but without doing that, then I had
2 access at that time.

3 Q So if they did not remove you from the bank account, then
4 you had control of the bank account.

5 A Correct.

6 Q When it says limited access to bank accounts, the key bank
7 account was the operating account?

8 A Yeah, I think so.

9 Q And you had total access, total unfettered access to
10 that -- correct? -- not limited?

11 A To that one account, yes.

12 Q That's the account that mattered; right?

13 A It was the operating account. It moved money in and out
14 for the things that I mentioned.

15 Q Is there any account that Red Rock had that had as many
16 transactions or saw as much money coming in as the operating
17 account?

18 A No.

19 THE COURT: Excuse me a minute. I want to make sure
20 I understand what you were saying. As I understand what you
21 said, the Red Rock managers whose names you gave, Hazen and
22 Williams and somebody else, I couldn't hear what you said,
23 began with an M it sounded like, could have access to the
24 operating account only if your name was removed from the
25 account?

1 THE WITNESS: Correct.

2 THE COURT: How was your -- how would your name be
3 removed from the account?

4 THE WITNESS: They would have to contact the bank and
5 request to do that.

6 THE COURT: "They" meaning?

7 THE WITNESS: The co-managers would have to do that.

8 THE COURT: Was there any restriction on their
9 ability to do -- to contact the bank and remove you?

10 THE WITNESS: Not that I'm aware.

11 THE COURT: Pardon me.

12 Q When you say there's no restriction, you do not believe
13 that -- you're not -- are you testifying that you don't think
14 that would have violated or been a breach of your agreement if
15 they removed you and your delegees from the account?

16 A I don't recall that being a breach of any agreement.

17 Q Well, if it --

18 THE COURT: Excuse me a minute. I don't think he's
19 asking you that, Mr. Martorello. It was a little hard to
20 follow, though. Do you want to try again, because the question
21 is, is he taking the position that removal would have been a
22 breach of some agreement; is that right?

23 MR. BENNETT: Yes.

24 THE COURT: Do you believe that removal of your name
25 from the account would have been a breach of any of the

1 agreements between you and your companies and Red Rock?

2 THE WITNESS: I'm not aware of any breach, a
3 provision that would breach as I sit here right now, but I
4 haven't looked to analyze it.

5 Q Well, so -- in fact, what is a lockbox?

6 A A lockbox is a bank account that receives cash and is
7 managed generally by some, you know, independent fiduciary
8 third party.

9 Q And you insisted -- when Big Picture was created, you
10 insisted on a lockbox in addition to the DACA, the deposit
11 access control agreement; correct?

12 A I believe we did ask for that, and it never got
13 implemented.

14 Q All right. And what were you asking for?

15 A Some independent fiduciary to do the waterfall
16 calculations fairly between the parties.

17 Q But instead of the lockbox in the Big Picture transition,
18 another DACA was implemented, and this time Brian McFadden and
19 Simon Liang remained as the signators on the operating account
20 of Big Picture.

21 A I think you're correct.

22 Q Now, in the paragraph just prior to 27, 26, you say, "No
23 company I own or manage has ever taken any action to collect,
24 in whole or in part, any consumer loan originated by Red Rock."
25 That's -- did you write that yourself, or did your lawyer write

1 that?

2 A I don't specifically recall.

3 Q So could you help the Court know or understand the process
4 that a consumer loan, the birth-to-death process, would go
5 through after a consumer executes online a Red Rock loan, then
6 how is the money collected from that consumer?

7 A They can either mail a check to the reservation, or
8 there's an automatic ACH process that would debit on the due
9 date and clear the cash into the operating account.

10 Q And then the most common, as well as the most preferred
11 from your standpoint, from Sourcepoint's standpoint, was the
12 ACH process; correct?

13 A That was the most common, yes.

14 Q And, in fact, it was a big concern of yours that the ACH
15 process -- that banks were not willing to accept ACH
16 relationships with tribal loans; correct?

17 A There was a period of time where that was an issue through
18 2014.

19 Q Okay. And then if a consumer terminated or their bank
20 didn't have money in it, the ACH, how was the consumer billed
21 and collected from?

22 A I'm sorry, if --

23 Q Right. Some consumers didn't pay their bills; right?

24 A Yes.

25 Q And how were they notified, the consumer? How were they

1 notified, hey, you're late, you didn't pay your bill?

2 A There would be an automated email that would recognize
3 that it wasn't paid, and so it would trigger an email through
4 the technology.

5 Q Okay. And was that technology part of the secret sauce
6 that Sourcepoint owned?

7 A No.

8 Q The code and everything that was shared with Red Rock?

9 A No, that would have been triggered from the loan
10 management software.

11 Q Who owned the loan management software?

12 A That was a third-party vendor.

13 Q And with whom -- again, the Red Rock period, with whom was
14 the contract with the loan management software vendor;
15 Sourcepoint or Red Rock?

16 A I can't remember right now.

17 Q So when you say that no action was taken to collect, what
18 do you mean by that? When you testified under oath here in
19 this declaration that Sourcepoint and Bellicose had no
20 involvement at all in the process of collecting money from
21 consumers, that's how I read it. Is that what you meant to
22 say?

23 A What I meant was that we did not take or receive any cash
24 from the consumer.

25 THE COURT: "We" meaning who?

1 THE WITNESS: Me or Bellicose or Sourcepoint, that
2 Red Rock was the entity that would collect through taking,
3 receiving, or demanding payment or something.

4 Q And that was because you used an on-reservation post
5 office box to receive checks; correct?

6 A It wasn't because of that. It was just because that's the
7 account that would do the collection. That was the company
8 that would do the collection.

9 Q What do you mean that was the company? What was the
10 company?

11 A Red Rock.

12 Q And can you identify the names of the individuals that
13 would call and try to collect money from consumers who were
14 employees of Red Rock?

15 A Well, that's different than this. That's debt
16 collections. That's like past due debt, and I don't know -- I
17 guess those would have been probably outsourced to a third
18 party center to do.

19 Q Sourcepoint would have hired a third-party call center to
20 outsource the debt collection?

21 A For bad debt I think we did for awhile, and I don't know
22 if it then changed to direct or not.

23 Q And then when you say collect, you are talking about the
24 process of receiving a check and putting it into the operating
25 account or having an ACH go into the operating account;

1 correct?

2 A Right, collection, yes.

3 Q And that didn't take -- ACH, for example, that did not
4 take any action at all on the part of Red Rock?

5 A No, that's not accurate.

6 Q Well, it went into the Red Rock account, the operating
7 account automatically; correct?

8 A Yeah.

9 Q That's the operating account that unless you were taken
10 off, only you and your company had control over; correct?

11 A Correct. But what I'm saying is someone had to take the
12 action to make the collection happen, and that happens through
13 the batch renewal process.

14 Q So your company did take action to collect bad debt;
15 right?

16 A No.

17 Q Hired a third party.

18 A We did hire -- well, I don't know that we hired a third
19 party. I think the tribe hired a third party to purchase its
20 defaulted loans.

21 Q Prior to -- well, and who selected the third party? Who
22 found, selected, and contracted, did the contracts with the
23 third party that would buy bad loans, Sourcepoint or Red Rock
24 or Bellicose and Red Rock?

25 A I'm trying to remember who it was. Capture Financial was

1 contracted with the tribe.

2 Q Who found the contract?

3 A I found the company.

4 Q You found the company. Who negotiated the contract with
5 the debt buyer?

6 A I don't know if we recommended -- the tribe's general
7 counsel.

8 Q So you found the company, and then you had no involvement
9 in the pricing or any of that; that's what your testimony --

10 A No, I didn't say that. I would have recommended some
11 structure or pricing that I thought was best for the tribe.

12 Q And then the tribe would have given you a true/false, yes
13 or no?

14 A They would have had to have said they would like to do the
15 deal or not, or they didn't like the deal, whatever they wanted
16 to say.

17 Q Do you have any recollection here sufficient for you to
18 swear in a federal courtroom that that's what you recall, that
19 is that the tribe actually approved the debt collection
20 contract?

21 A They would have had to approve the debt collection
22 contract.

23 Q That's not what I'm asking you. I'm asking you if you
24 have any independent recollection here today that the tribe did
25 that.

1 A I know it's an impossibility, so I don't know --

2 THE COURT: The answer to that is yes or no; yes, I
3 have the recollection. Do you or don't recall?

4 THE WITNESS: Well, I know that they did. I just
5 can't say -- maybe I'm not understanding the question right.

6 Q Take a look at paragraph 34 of your declaration. Now, you
7 say "Red Rock did not receive two percent of the net revenues
8 under the terms of the servicing agreements. Instead, as the
9 documents I've reviewed that were provided in discovery
10 demonstrate, LVD chose to structure their arrangement to
11 stabilize their monthly income as a percentage of gross
12 revenues adjusted for bad debts." Do you see that?

13 A Yes.

14 Q Now, first, I want to ask, did you write this, or did your
15 lawyer?

16 A I presume that I wrote it, but I'm not certain.

17 Q And when you say LVD chose, you are not suggesting that
18 this is a structure LVD wanted and it was their idea, are you?

19 A It was their idea.

20 Q It was their idea. LVD said we want to pay two percent.

21 A No, I'm talking about the structure of the arrangement.

22 Q Well, you heard Mr. Merritt, so you suggested and asked
23 that he and then Mr. Rosette approach LVD and see if they would
24 accept two percent; correct?

25 A Two percent was my counteroffer to their offer.

1 Q Okay. Is there -- have you seen a document that says
2 that?

3 A It was a verbal conversation.

4 Q Oh, it was a verbal conversation. All right, well, let's
5 take a look at Exhibit 16. By the way, before we talk about
6 16, the tribe -- you know that the tribe didn't even get two
7 percent; right?

8 A They -- TLM got one percent, and they got one percent.

9 Q That was the middleman including Mr. Rosette's company?

10 A Right. That was until July 2012.

11 Q So until July 2012, it was one percent that the tribe got,
12 one percent of gross less write-offs, bad debt; right?

13 A Yes.

14 Q And then after that, the tribe had a buyout where they had
15 to buy out TLM; correct?

16 A I learned that a few weeks ago, yes.

17 Q Now taking a look at Exhibit 16, this is an email chain
18 dated June 19, 2012, and then earlier between you and Karrie
19 Wichtman in her capacity as a lawyer at Rosette representing
20 the tribe; correct?

21 A Correct.

22 Q And then in this chain, this is one of those instances
23 that the Judge earlier asked about. Some of it's colored that
24 has Matt Martorello's response to Ms. Wichtman's questions;
25 correct?

1 A Yes. I can't see the colors.

2 Q You don't have the colors, all right.

3 THE COURT: Neither do I.

4 Q After Matt Martorello, you'll see in each of the
5 paragraphs starting on page -- the fifth page of the exhibit,
6 on the fourth page of the exhibit --

7 THE COURT: What's the last Bates digit, 602?

8 MR. BENNETT: It's 601.

9 Q Everywhere where it says Matt Martorello and italicized
10 brackets, what follows in each is your text responding; is that
11 correct?

12 A Yes.

13 Q And can you explain the context of this email?

14 A It's a really long email.

15 Q Well, do you recall the email? I'm not asking you to
16 summarize. I'm just asking the context of it.

17 THE COURT: What do you mean by context?

18 Q Why were you communicating with Ms. Wichtman in this email
19 exchange?

20 A I did not like that TLM was receiving part of what I
21 thought the tribe should be getting.

22 Q And then there was a discussion about -- there's a
23 discussion here about regulatory risks. Do you know who Scott
24 Tucker is?

25 A I've heard of him, yes.

1 Q Who do you understand him to be?

2 A He was someone who had a complete fraudulent lending
3 enterprise.

4 Q He did what you did but was not completely -- but in his
5 instance, it was completely fraudulent; right?

6 A It was very, very different than this.

7 Q He was a --

8 THE COURT: Wait a minute. What did you say?

9 THE WITNESS: I said it was very, very different than
10 what happened here.

11 Q Mr. Tucker was a non-tribal businessman who created a
12 servicing relationship with an Indian tribe to make high
13 interest loans to consumers; correct?

14 A I think they found that the relationship didn't exist
15 effectively, that it was a total sham.

16 Q And then he went to prison.

17 A Yes.

18 Q And prior to that, the regulatory agencies were suing Mr.
19 Tucker claiming that he was not a mere servicer but was the
20 true lender; right?

21 A I think the suit against him was federal consumer lending
22 laws, like TILA and Reg E from the FTC.

23 Q So I've called this out now on the screen, and starting
24 with -- and this is Ms. Wichtman. You'll see on the screen it
25 said, "Personally, I see only a few issues on the regulatory

1 side." Do you see that?

2 A Yes.

3 THE COURT: What page are you on?

4 MR. BENNETT: We are on the fourth page, and I have
5 this on the screen popped up.

6 THE COURT: The bottom paragraph.

7 MR. BENNETT: Bottom paragraph.

8 THE COURT: All right.

9 Q And one of the items that Ms. Wichtman told you about
10 was -- and she's outlining some of the possible regulatory
11 risks. Right after your section, which your section in red
12 ends at the word "process." Is everyone following me? So your
13 insert was, "If so, I'd imagine just requiring somebody's
14 attention for two to three weeks a year to get through that
15 process."

16 And then she writes, "The second piece is the profit
17 to the servicer, we have to be prepared to show that the
18 percentage of net profit that the servicer is receiving is
19 defensible compared to what the tribe is receiving." Do you
20 see that?

21 A I do.

22 Q And you responded to that on the next page; right?

23 A Sorry, where on the next page are you?

24 Q And I've called it out on the screen right there. And you
25 defend saying that the Tucker case was tested in Colorado and

1 the Supreme Court upheld it with just one percent. Do you see
2 that?

3 A Yes, that's correct.

4 Q Okay. Now, this conversation about money and the tribe's
5 questioning either directly or through its lawyers about money,
6 that was a topic that kept coming up. It came up multiple
7 times from the tribe asking you either directly or impliedly
8 for more money.

9 A You are talking pre-transaction?

10 Q Pre-transaction.

11 THE COURT: You're saying during the negotiations
12 that led to the creation of Red Rock, to sale, what? Ask the
13 question in a way that puts some context --

14 MR. BENNETT: Yes, sir. This was 2012. This was
15 before the sale.

16 THE COURT: Just ask the question, though.

17 MR. BENNETT: Sure.

18 Q The tribe periodically would ask you for more money;
19 correct?

20 A I don't recall them asking for more money pre-transaction.

21 Q You don't.

22 A No.

23 Q So this -- this is in red on my screen, and I'm calling it
24 out on yours. This is page, again of Exhibit 16, sixth page,
25 and you write, "Now all of that said, I get the feeling the

1 tribes may want more money." Skipping two sentences, "However,
2 the level of sophistication behind the scenes built into the IP
3 that SPVI uses, which makes SPVI clients succeed while majority
4 of lenders fail is massive. Going it alone is an exercise in
5 how much money do you want to lose before you make it up the
6 learning curve high enough to know how to do it right. That
7 takes a lot of analytics to get there and the faster the
8 better." That was your response; correct?

9 A Yes, I wrote that.

10 Q That's not the only time prior to the negotiations
11 starting in which you responded that the tribe is pushing for
12 more money, and you don't want to provide that; correct?

13 A They weren't pushing. I was saying that I -- my instinct
14 was that maybe they wanted to get more. They never asked.

15 Q Well, let's take on paragraph 15. I'm sorry, document 15.

16 THE COURT: SPVI is Sourcepoint 6? Is that what it
17 is?

18 MR. BENNETT: I think it's Sourcepoint Virgin
19 Islands.

20 Q Mr. Martorello, in fact --

21 THE COURT: Wait a minute. Is that right, Mr.
22 Martorello?

23 THE WITNESS: Sourcepoint VI, Virgin Islands, that's
24 correct.

25 Q Part of your business was in the Virgin Islands, and then

1 you moved to Puerto Rico?

2 A Yes.

3 Q Those were because of various tax structures that you were
4 able to benefit from?

5 A There are the economic development programs of those
6 jurisdictions.

7 Q And that's why you switched from Virgin Islands to Puerto
8 Rico?

9 A I moved there, to Puerto Rico, to join their tax program,
10 their economic development program.

11 Q Now, I'm showing you right now what is exhibit --

12 THE COURT: What does that mean? You were working
13 for the economic development people of Puerto Rico?

14 THE WITNESS: Both Virgin Islands and Puerto Rico
15 have economic development programs, so they're recruiting
16 people to come down and create jobs and spend money on local
17 resources and things, and they give you an exemption to your
18 tax rates if you do it.

19 THE COURT: So you moved for tax benefits.

20 THE WITNESS: Yeah, to participate in that program.

21 Q Now, this is an email just between you and Mr. Merritt
22 dated June 2012; do you see that?

23 A Yes.

24 Q Now, earlier today, you testified that you understood Mr.
25 Merritt worked for LVD, he was their agent; correct?

1 A Through TLM. I said he was -- TLM was an agent of LVD,
2 and he wash associated with that.

3 Q And so let me clear that real quick. At the top here of
4 this very email is Mr. Merritt speaking to you. And he
5 includes the statement, "We're your advocate, so we'll act on
6 your behalf regardless." This was just June of 2012, a year
7 after the OLA conference; right?

8 A Yes.

9 Q So your advocate -- you had written your advocate here,
10 and you didn't, in this instance, copy either Mr. Rosette or
11 Ms. Wichtman; is that correct?

12 A Correct.

13 Q Unlike the other exchanges that we've gone through today.

14 A Correct.

15 Q And, here, you say in your text that you would like to
16 find a second tribal client. "While I like the exclusivity and
17 very much like the relationship with LVD, I am concerned about
18 the long term as I think they likely have motives not aligned
19 with an exclusive servicing arrangement, and I think they are
20 starting to feel underpaid as the heat comes on at the federal
21 level." Do you see that?

22 A Yes.

23 Q So their long-term motives were that they wanted to be
24 able to do this themselves and not involve you; correct?

25 A That was their long-term motive.

1 Q And because they had that motive, you started looking to
2 get out of business with LVD, to find a second tribal client.

3 A I know I wanted to diversify tribal clients, but I don't
4 recall exactly what triggered me to say the exclusive servicing
5 arrangement here or what triggered the concern about them not
6 wanting an exclusive servicing arrangement.

7 Q Let's continue through your declaration. How about
8 paragraph 40 now.

9 THE COURT: Mr. Bennett, it's a good place to have
10 lunch. We'll have an hour for lunch.

11 MR. BENNETT: Yes, sir.

12 THE COURT: I believe -- I don't know where we stand
13 on the time. Who is the timekeeper?

14 MR. DILLON: Your Honor, I have us at roughly about
15 one hour 44 minutes.

16 THE COURT: Mr. Martorello's answers are so often not
17 concise and rambling, and they are rambling, that I may give
18 you a little bit more time. I'll kind of wait and see how it
19 goes after the lunch break. We'll see how we're coming. If
20 that's the case, what I'll do is give you the rest of the day
21 and give them the day tomorrow. We'll be in recess.

22 (Luncheon recess.)

23 THE COURT: All right. I remind you, Mr. Martorello,
24 you're under the same oath you took earlier this morning. All
25 right. Have you gotten things sort of streamlined, Mr.

1 Bennett, during the lunch recess?

2 MR. BENNETT: Yes, sir.

3 THE COURT: Good.

4 Q Mr. Martorello, in your declaration, starting at paragraph
5 29, you discuss the servicing agreement between Red Rock and
6 Sourcepoint and Bellicose. Do you see that?

7 A Yes.

8 Q And in particular, paragraph 33 says you are familiar with
9 the servicing agreement between the two; is that correct?

10 A Sorry, which paragraph?

11 Q 33.

12 A Yes.

13 Q And you were heavily involved in the creation of that
14 servicing agreement; correct?

15 A I was involved in the negotiation of the servicing
16 agreement.

17 Q Well, you knew what was in it, you read it carefully?

18 A While it was being negotiated, I did read it.

19 Q So recall that we discussed the role that you played and
20 that your companies played in collection of the incoming
21 revenue from consumer borrowers, recall that just before lunch;
22 right? Your testimony, your declaration is that none of your
23 companies collected --

24 THE COURT: Wait a minute. Give him a chance to
25 answer the question. Do you remember the discussion you had

1 before lunch about the collection of payments from consumers?

2 THE WITNESS: I remember the conversation.

3 THE COURT: You are talking about "I have never" --
4 paragraph 26, "I have never taken any action to collect, in
5 whole or in part, any consumer loan originated by Red Rock";
6 right? Is that what you are talking about?

7 MR. BENNETT: Yes, sir.

8 THE COURT: We're there now. We're all oriented.

9 Q I'm orienting you now to document number 11, Exhibit
10 Number 11, which is the original servicing agreement dated
11 October 25th, 2011, between Red Rock Tribal Lending, LLC, and
12 Bellicose VI, Inc. Do you have that before you?

13 A Yes, now I do.

14 Q And here it's on your screen now?

15 A Yes.

16 Q And I want to push us forward a little bit to page 15 of
17 it which is paragraph 4.9 which I've called out on our screens.
18 Do you see that?

19 A I see it.

20 Q And what does it say that you, as the servicer, did with
21 respect to the consumer loans revenue that was coming in?

22 A Well, it doesn't say what we did.

23 Q But it says, "The servicer shall collect all gross
24 revenues and other proceeds connected with or arising from the
25 operation of the enterprise"; right?

1 A That's what it says. We didn't do that.

2 Q You didn't do that?

3 A No.

4 Q You didn't?

5 A We did not.

6 Q I could walk you to document number 20, I will, but you
7 agree with me that this will have the same paragraph; right?
8 4.9.

9 THE COURT: I don't know whether he understood that
10 or not, but I didn't.

11 THE WITNESS: Yes, we're going to Exhibit 20?

12 THE COURT: We're going on exhibit what?

13 MR. BENNETT: 20.

14 THE COURT: And what is that? That's the amended --

15 MR. BENNETT: That's the amended servicing agreement,
16 Your Honor.

17 THE COURT: And you're going to paragraph --

18 MR. BENNETT: 4.9.

19 THE COURT: All right.

20 Q Who did the first draft of the servicing agreement between
21 you and your team versus Red Rock?

22 A Of this one specifically or the one before it?

23 Q Either one. Tell us about both.

24 A They provided an agreement which I think when Jennifer
25 Weddle got involved, I think maybe she had introduced this

1 agreement.

2 Q All right. Let's go back, and I'm sorry. Now that I have
3 everybody's attention on 20, let's go back to 11.

4 Now, one of the questions I asked you was were you aware
5 that the tribe or LVD was receiving only one percent of the
6 defined revenue, and you said I just learned it last week;
7 right?

8 A No. I think my testimony was that I learned last week
9 about the buyout number, that they got bought out for some
10 additional 960,000.

11 Q So you've always been aware that the tribe was only
12 receiving one percent.

13 A No. The tribe was receiving two percent, and then from
14 that it had an agreement to pay TLM one percent for the
15 brokerage services that it provided.

16 THE COURT: Just so the record is clear, the
17 agreement was to pay half of the two percent to TLM.

18 THE WITNESS: That was the tribe's agreement, yes.
19 Not my agreement.

20 THE COURT: I understand that. Literally, one
21 percent of two percent is quite different than half of two
22 percent. So I want to make sure that we're all on the same
23 page, that TLM was receiving half of the two percent.

24 THE WITNESS: Yes, the tribe was paying them gross
25 one percent, half of their two percent.

1 Q On your screen, I believe, I have from Exhibit 11 at page
2 17 paragraph 6.4.1. And this was in your original service
3 agreement; correct?

4 A This was in the original one, I believe, not the amended.

5 Q Right. And it was taken out of the amended because there
6 was concern that it might look bad if you were challenged as
7 the true lender if the tribe was only receiving one percent
8 of -- according to how this tribal net profits?

9 A Well, my understanding was that it was taken out because I
10 didn't --

11 THE COURT: Go back again. Remember what I told you.
12 The answer is yes or no.

13 THE WITNESS: That's not the reason it was taken out.

14 Q All right, what was the reason that you took it out?

15 A I didn't take it out, but it was taken out -- the reason
16 why I didn't like it was because I didn't want TLM getting paid
17 from the tribe because I felt that made me less competitive
18 with the other opportunities the tribe could have contracted
19 with. So it was a way for the tribe to get the whole two
20 percent and, you know, if they could get away from paying their
21 broker. Then they went and renegotiated something.

22 Q And I have a reason --

23 THE COURT: Excuse me. I thought I understood it,
24 but I don't know, so I'll clarify. Is it correct that the
25 amended agreement, Exhibit 20, does not contain a provision

1 such as is in Section 6.4.1 of the Exhibit 11, the original
2 agreement; is that right?

3 THE WITNESS: That's correct.

4 THE COURT: And it's that provision being taken out
5 that you were referring to about why it was taken out; is that
6 right?

7 THE WITNESS: Yes.

8 THE COURT: All right. Thank you.

9 Q Now, we talked a bit before about intellectual property.
10 Mr. Martorello, do you change your interpretation of a
11 contractual term or relationship depending upon who you are
12 speaking to or writing to?

13 A No.

14 Q So, in some instances, you have had to -- it was to your
15 benefit -- correct? -- to explain why you, your company had a
16 lot of value; right?

17 A In some instances, yes.

18 Q In some instances, it's important for you to show how your
19 company had very little value; right?

20 A Correct.

21 Q And you know where I'm going. We have documents where
22 you've done both; right?

23 A Yes.

24 Q So let's take a look at document 115 which is on your
25 screen, but it is probably in volume two.

1 THE COURT: 115?

2 MR. BENNETT: Yes, Judge.

3 THE COURT: Do you have it there, Mr. Martorello?

4 THE WITNESS: Yes.

5 THE COURT: All right.

6 MR. BENNETT: This is an email chain, and looking at
7 the last page of it, that you started December 6, 2016, with
8 some people from -- in this, it's from Budd Larner, B-u-d-d
9 L-a-r-n-e-r. Do you see that?

10 A Yes.

11 Q So who are these people? In this case, who is JBradley of
12 buddlarner.com?

13 A It's a law firm, and I believe he's probably a tax or IP
14 lawyer.

15 Q Okay. And then the beginning of the document, there's a
16 domain for a person from a company Aranca, A-r-a-n-c-a. Do you
17 see that?

18 A Yes.

19 Q What was Aranca?

20 A They were a valuation firm.

21 Q And so in 2016, what were you trying to do? What were you
22 trying to accomplish in your communications with Budd Larner
23 and Aranca?

24 A So it looks like here I'm going to try and figure out a
25 2012 allocation done by Deloitte, and the allocation was

1 \$7.7 million. It says liquidation value, and so that's what
2 Deloitte came up with as a portion of the valuation attributed
3 to liquidation value. I needed more information to understand
4 how that broke down in terms of what specific assets made up,
5 quote, liquidation value. So we had to do a little research
6 project.

7 Q You didn't just need more information. You were trying to
8 see if there was any way that the valuation, the liquidation
9 number of 7.7 million could be lowered; correct?

10 A I'd have to look at the document to decide if that's what
11 I was trying to do.

12 THE COURT: Well, read it.

13 THE WITNESS: I wasn't trying to adjust the number.
14 I was trying to clarify the specific assets that were within
15 the number, one of which, I guess, is goodwill which we talk a
16 lot about here.

17 Q Even though this is a 2016 correspondence, you are
18 discussing the status or state of asset ownership and valuation
19 of Sourcepoint and Bellicose in 2012; correct?

20 A That is correct.

21 Q So can you read, so that we all have it in the record
22 here, under 2012, potential for intangible assets, about IP,
23 and by that, that's what you are referring to as intellectual
24 property; right?

25 A Yes.

1 Q Did you read that paragraph?

2 A "The client/tribe often argued with me that" --

3 Q Do me a favor, Mr. Martorello. Our court reporter is able
4 to transcribe me so you know she's good, but just keep it at a
5 regular pace, please.

6 A Sure. "The client/tribe often argued with me that they
7 view all of the IP and data as their property. They strongly
8 believe that SPVI was paid to create the IP for them and to
9 facilitate them in using it. Early on I agreed with their
10 position, but in 2014, I argued the opposite to that as I
11 wanted to sell the business and it felt pretty pertinent. Now,
12 reading the contracts, nothing is stated about IP, but it is
13 very clear in Section 4.2 that SPVI is hired for the service of
14 creating all of these business methods for the tribe. It
15 appears pretty clear that the tribe was correct in that the IP
16 created to service their business was always their property."

17 Q Now, so I understand this, what you are writing to this
18 person here in 2016 is that in 2012, you agreed that
19 intellectual property was to go to the tribe; right?

20 A No, I'm referring to 2014.

21 Q But it says early on. But then you had the opposite
22 position in 2014.

23 A No, that's not correct. The email we looked at earlier
24 where we're talking about prescreen direct mail and the
25 pre-qualified leads, that's where I was saying pre-qualified

1 leads are our IP, and I had that disagreement with the tribe
2 there, and I'm referencing it here, but, obviously, as I'm
3 writing it, I'm not recalling the difference -- I'm not
4 recognizing as I write it that that was pre-qualified leads and
5 not the developed and recommended underwriting and verification
6 and procedures and things.

7 Q Do you tell the truth when you're not under oath?

8 A Yes.

9 Q And so as I understand here, it says early on you agreed
10 with the tribe's position which is that you were supposed to be
11 giving IP to the tribe; right? So before 2014, you said you
12 agreed with that position?

13 A All of the IP, all of it, that's what it says, yes.

14 Q In 2014, you took the opposite position because, hey, I
15 was trying to sell the business; right?

16 A No. When I wrote this, I wasn't understanding that -- one
17 of the things we do is provide pre-qualified leads. That's our
18 IP. So when we had that dispute in 2014, she was saying, I
19 think that's ours, and you saw the email where I said, no,
20 that's our whole business, you know, you would own us if that
21 was yours. So there's a segmentation or a difference between
22 that IP and this IP.

23 I didn't articulate that well when I was writing this
24 email sort of kind of on the fly, but -- nor had I really
25 studied in detail. I just looked at the document and said --

1 it says develop and recommend, so what we give to them is
2 theirs. One of the other things we do is provide pre-qualified
3 leads, and that's our formulas.

4 THE COURT: Is there any part of the paragraph that
5 you all are talking about on page 445 of Exhibit 115 that talks
6 about pre-qualified leads? I just don't see it, and if it's
7 there, I want to know.

8 THE WITNESS: It's not in there. Just with all of
9 the IP and data includes -- their view of all IP included my
10 IP, and that was the disconnect that I had with the tribe.

11 THE COURT: But at one time you agreed with them, and
12 then you had a change of mind; is that right?

13 THE WITNESS: No, because there were different
14 subjects. I just wasn't clear on that when I typed this at the
15 time. So the thought was, you know, we develop and recommend
16 IP to the tribe, and then I'm saying there was a time in 2014
17 where they said, hey, Matt, your pre-qualified lead software or
18 algorithms are also ours, and I said, no, that's not yours.

19 And so I'm referencing back to that conversation here
20 and saying that, you know -- just inartfully, I guess, saying
21 that I said all of the IP was theirs, and then when we had that
22 disagreement, that I said the opposite with respect to that IP,
23 but the accurate -- so what I said was actually inaccurate here
24 because I wasn't articulating what we were disagreeing on in
25 2014.

1 THE COURT: All right.

2 Q So what was the value of leads? How would that have
3 changed the liquidation value if the story you are offering
4 today were so? If all you were talking about there was leads,
5 how would that have had any real effect on the valuation in
6 your discussions with those two valuation companies handling
7 your tax issues?

8 A Well, the 7.7 million is not classified. So that would
9 include leads and everything else that we owned, not the tribe.
10 That was our IP value for purposes of a tax study end of 2012.

11 Q Now, did you ever market to Bellicose and Sourcepoint and
12 Balance Credit, another company with which you were involved,
13 to investors to try to bring in money?

14 A We had hired --

15 THE COURT: Wait a minute. Are you asking him if he
16 tried to sell another company he owned to those three or four
17 entities that you asked about?

18 MR. BENNETT: No, sir. I'm asking if he ever
19 marketed to Wells Fargo to try to bring in money for whatever
20 reason for one of his three companies.

21 THE COURT: Ask him that, because I didn't understand
22 what you were saying. Did he market what? Start it again.
23 Did you try to sell another company; is that what it is?

24 Q Well, how about if I bring you to Exhibit 47. Let's help
25 us all out. By the way, what is Balance Credit?

1 A Balance Credit is the d/b/a for a stay license lender in
2 Chicago.

3 Q And it's just a random lender, or is there some connection
4 between you or any of your companies and Balance Credit?

5 A I was the founder of Balance Credit.

6 Q And what is Middlemarch?

7 A Middlemarch is an investment bank that we hired to raise
8 capital for tribal lending between 2013 and July 2014 for the
9 tribal clients and also for Balance Credit.

10 Q And so looking at 47, this is a pitch book that you and
11 Demetris P-a-p-a-d-e-m-e-t-r-i-o-u -- we'll say Demetris here
12 on out, that you and Demetris were putting together to market
13 to Wells Fargo; correct?

14 A Let me take a look real quick, please. The pitch book
15 was --

16 Q That's not what I asked you.

17 A The answer is no.

18 Q So this was not -- you and Demetris were not putting
19 together a presentation to make to Wells Fargo?

20 A We had one from a year ago that we were going to present
21 to Wells Fargo.

22 Q But this document was a draft pitch book made by your
23 marketing company for your review to then submit to Wells
24 Fargo?

25 A We did submit this to Wells Fargo, but it was made for a

1 bunch of reasons.

2 Q So this is the pitch book that went to Wells Fargo.

3 A I believe so.

4 Q Now, let's talk about that. Let's go to page -- let's
5 talk about the first page, and I can draw your attention to the
6 second paragraph, really the last two sentences, which I'm
7 trying to highlight a bit -- I'll try this -- on your screen.

8 "We should also discuss how much we want to expose on the
9 tribal lending experience. I hear you that we don't want to
10 overload them, but it is important to show your history as a
11 lender to establish credibility." Do you see that?

12 A I do.

13 Q And you were concerned that if a lot of information became
14 public about your role at Sourcepoint and providing service for
15 a tribal lender, that it could expose you; right?

16 A I was -- well --

17 THE COURT: Yes or no?

18 THE WITNESS: At this date? I'm trying to think. We
19 were marketing ourselves --

20 THE COURT: Yes or no?

21 THE WITNESS: I can't say on this date exactly.

22 Q Okay. Let's skip ahead to the presentation itself.

23 THE COURT: According to my copy of Exhibit 47, it's
24 a draft. It says in the first sentence it's a draft.

25 MR. BENNETT: Yes, sir.

1 THE COURT: Is that correct, it's a draft of a
2 document that went to Wells Fargo, Mr. Martorello?

3 THE WITNESS: I can't be --

4 THE COURT: Did it actually go? I'm confused whether
5 it went or whether it was a draft.

6 THE WITNESS: I don't know if it actually went.

7 THE COURT: Thank you. He doesn't know.

8 Q Mr. Martorello, you earlier, moments ago, testified that
9 this is what was used for Wells Fargo; right?

10 A We're talking about sending it to Wells Fargo.

11 THE COURT: Just a minute. The answer to that is --
12 I'll answer that. Yes, that is what he testified to, and that
13 is why I asked the question. When I read the first line of it,
14 it says it's a draft, and -- but he testified this actually
15 went to -- was used to go to Wells Fargo. And that's why I
16 asked the question. So did there subsequently come about
17 another iteration of this draft?

18 THE WITNESS: I was wrong with my testimony. I
19 think --

20 THE COURT: Yes or no with respect to my question?
21 Is there another iteration of this document later on?

22 THE WITNESS: I don't know.

23 THE COURT: You don't know.

24 Q Now, in the document itself -- and, by the way, we only
25 have what was given to us. Your lawyers received the same

1 thing. We don't have another iteration of it, but if you want
2 to take a look at the PowerPoint or pitch sheets themselves,
3 that would be the third page of -- the fourth page of the
4 document.

5 THE COURT: Still on Exhibit 47?

6 MR. BENNETT: We are.

7 Q And this was an investor presentation made by Middlemarch,
8 your retained company, on behalf of Balance and Sourcepoint;
9 correct?

10 A Yes.

11 Q And I have the executive summary which, at this point, is
12 the only version that we've ever been provided. Do you see
13 under Sourcepoint and its predecessor companies have over
14 15 years of experience in the short-term online lending
15 industry?

16 A I see it.

17 Q And do you see that Middlemarch, on your behalf, wrote
18 "Sourcepoint began lending in 2011 through its relationship
19 with," I'm just going to say LVD. Do you see that?

20 A Yes, I see that.

21 Q And --

22 THE COURT: What are you talking about here? Which
23 page?

24 MR. BENNETT: Your Honor, I'm at page two of the
25 PowerPoint presentation.

1 THE COURT: My page two of the PowerPoint says
2 executive summary.

3 MR. BENNETT: Yes, sir.

4 THE COURT: And the company overview industry
5 background. The next page says executive summary to be
6 updated.

7 MR. BENNETT: Yes, sir.

8 THE COURT: Is that what you are talking about?

9 MR. BENNETT: Yes, sir. It's numbered page, on the
10 bottom, two, but it's page three of the document, and I've now
11 called out the question and the text that I've just asked and
12 received confirmation about.

13 THE COURT: All right.

14 MR. BENNETT: That Sourcepoint began lending in 2011
15 through its relationship with LVD.

16 THE COURT: I'm now with you. All right.

17 THE WITNESS: That wasn't what I testified to, Mr.
18 Bennett. I was just confirming what you read, but this is to
19 be updated. It's a draft. There's no way this would have gone
20 to Wells Fargo as I read it today.

21 THE COURT: That isn't what he asked you. What he
22 asked you is was that a correct statement that is made there
23 that he read.

24 THE WITNESS: I thought he asked if I see that, and I
25 said yes, but it's definitely not correct.

1 THE COURT: Look at the text Sourcepoint began
2 lending in 2011 through its relationship with the LVD,
3 etcetera. Is that correct or not?

4 THE WITNESS: That's not a factual statement.

5 THE COURT: Is it correct?

6 THE WITNESS: It's not -- no, that's not what
7 happened.

8 THE COURT: What's wrong about it?

9 THE WITNESS: We weren't a lender.

10 THE COURT: You weren't a lender.

11 THE WITNESS: Correct.

12 Q But, of course, you were here attempting to persuade --
13 whether or not you were a lender, you and Middlemarch, as your
14 spokesperson, were trying to persuade Wells Fargo and other
15 investors to invest in Sourcepoint and to invest in Matt
16 Martorello; correct?

17 A No, incorrect. It was to invest in our tribal clients.

18 Q Okay.

19 THE COURT: Wait a minute. To invest in what?

20 THE WITNESS: LVD, our tribal clients and other
21 tribes.

22 Q The first page, the letter addressed to you says, "I hear
23 you that we don't want to overload them" -- that would be the
24 investors -- "but it is important to show your history as a
25 lender to establish credibility." You understood that this was

1 a pitch that you were connected to, was, hey, I'm Matt
2 Martorello, I've got a lot of experience, lend millions and
3 millions of dollars to whoever we ask you to; right?

4 A I disagree.

5 Q Well, where are the documents that update this or that
6 show that you made any corrections or an email back that said,
7 no, that's not right?

8 A I don't know that there is one.

9 Q I'm now showing you --

10 THE COURT: Where did you get these documents?

11 MR. BENNETT: We subpoenaed Middlemarch. Third-party
12 subpoena.

13 THE COURT: Of whom?

14 MR. BENNETT: Middlemarch.

15 THE COURT: How would he know what Middlemarch has?
16 He knows what he's got.

17 MR. BENNETT: Then where is a document from him,
18 where is his email?

19 THE COURT: Let's do this: Did there come a time
20 when you -- when a presentation was made to Wells Fargo?

21 THE WITNESS: Not that I recall.

22 Q Now, I now have us on page six. It says six on the bottom
23 which would be page seven of the PowerPoint, and top point says
24 "Sourcepoint VI History." Are you with me, Mr. Martorello?

25 A I am on the same page.

1 Q I want to continue to ask you about parts of this that --

2 THE COURT: What page are you on?

3 MR. BENNETT: It's page six of the PowerPoint
4 presentation --

5 THE COURT: There's no numbers on my copy of the
6 PowerPoint presentation.

7 MR. BENNETT: At the top it says "Sourcepoint VI
8 History."

9 THE COURT: All right, I see it now. It's many pages
10 into it. Okay. I've got it now. Do you have it, Mr.
11 Martorello?

12 THE WITNESS: Yes.

13 Q You've said that the pitch -- this pitch was to try to
14 convince your investors to lend money to your sovereign
15 clients -- right? -- your tribal sovereign clients?

16 A No. I said this never -- this is abundantly incorrect.

17 THE COURT: Mr. Martorello, I'm sorry, but you did
18 say that the purpose of this was to make a pitch on behalf of
19 your tribal clients. Every time you try to backtrack, every
20 time you evade, you create the impression that you're not
21 credible, and I have to decide your credibility.

22 So pay attention to the question that he asks you.
23 You were answering, I think, a different question, and that is
24 whether this document was used in doing anything. He didn't
25 ask you that. He asked you did you earlier testify that this

1 was prepared for the purpose of making a pitch for somebody,
2 and you said, no, it was on behalf -- to make a pitch on behalf
3 of the tribal clients. And then he just asked you the same
4 question again, and you said, no, that wasn't what it was done
5 for.

6 Can you understand how a person trying to determine
7 whether someone else is telling the truth is confused by
8 conflicting answers of that sort? If you want to go back and
9 say you're changing your testimony, you can do that, but you
10 can't expect me to hear two different versions of the same
11 thing and come to the conclusion that I can rely on your
12 testimony.

13 All right. I know what he said. I heard what he
14 said. Now, have you got a question you want to ask?

15 MR. BENNETT: I do.

16 Q I'm showing you that same page, but I've called out --

17 THE COURT: What same page?

18 MR. BENNETT: The document Exhibit 47 that says
19 Sourcepoint VI History at the top.

20 THE COURT: All right.

21 Q Under the timeline, I've now pulled up on your screen the
22 block for 2013. Do you see that?

23 A Yes.

24 Q And I'm going to use my pen here and circle that begins --
25 the second bullet point from the bottom, "Begins wind down of

1 existing sovereign portfolios." Do you see that?

2 A Yes.

3 Q In 2013, what sovereign portfolios did Sourcepoint have?

4 A None. The tribal portfolios, it may have been referencing
5 Duck Creek.

6 THE COURT: Duck Creek?

7 THE WITNESS: Yeah. One of LVD's portfolios.

8 Q It says portfolios, plural. How many sovereign portfolios
9 did Sourcepoint ever have involvement with?

10 A Just the two at LVD.

11 Q So when it says 2013 begins wind down of existing
12 sovereign portfolios, plural, that would be referring to LVD if
13 Middlemarch, in the dec it sent you, had accurately summarized
14 information you gave them; right?

15 A That's right.

16 Q And, in fact, Middlemarch --

17 THE COURT: Was it accurate?

18 THE WITNESS: No.

19 THE COURT: Did you have -- did Sourcepoint VI have
20 any so-called sovereign portfolios in 2013? I thought you said
21 there was Duck Creek or something.

22 THE WITNESS: Duck Creek is the portfolio at LVD that
23 winded down?

24 THE COURT: In 2013?

25 THE WITNESS: I believe it was 2013, yes.

1 THE COURT: And that portfolio, was it -- were you
2 helping somebody wind it down at that time?

3 THE WITNESS: Yes, I was helping the tribe unwind it.

4 THE COURT: Unwind it, undo it. All right, thank
5 you. All right, Mr. Bennett.

6 Q Now --

7 THE COURT: What was the other one that the tribe
8 had, Duck Creek and what else, Red Rock?

9 THE WITNESS: Yes.

10 THE COURT: Did you help unwind -- did Sourcepoint
11 help unwind Red Rock in 2013?

12 THE WITNESS: No.

13 THE COURT: Excuse me. Go ahead, Mr. Bennett.

14 Q Now, let's -- while we're -- pitches that you've made to
15 third parties, I want to talk about -- let me shift to
16 paragraph 69 of your declaration.

17 Now, there came a time when you began to shift towards
18 what became Big Picture Loans -- right? -- where you sold
19 Sourcepoint and then took a seller finance loan back to
20 Eventide, created Big Picture Loans; correct?

21 A Correct.

22 Q And on 69, paragraph 69, by the way, did you write this or
23 did your lawyers?

24 A I believe I wrote this.

25 Q And can you read that first sentence of which you swore

1 under oath.

2 A "Contrary to the allegations of plaintiffs, the decision
3 to sell Bellicose to LVD was not motivated by impending threats
4 of litigation or enforcement actions by government agencies."

5 Q Do you want to change that now that we've had discovery?

6 A No.

7 Q So your position under oath was that impending threats of
8 litigation or enforcement actions by government agents was not
9 a motivation for why you wanted to sell Bellicose to LVD.

10 A It was not the motivation, no.

11 Q Let's go through a few documents, if you can. Do you have
12 your first binder? Will you turn to -- I'm going to do this in
13 the order of our exhibits. Let's start with 18.

14 A Okay.

15 Q So this, by my count, in my binder, is the earliest one of
16 these, but this is a document that is dated July of 2012, and
17 you are discussing in this the possible problems from the CFPB;
18 right? I'm looking in the 4:01 a.m. email from you to the
19 tribe's lawyer and particularly the first paragraph which I'm
20 calling out on our screens.

21 THE COURT: What exhibit are we on?

22 MR. BENNETT: We are on Exhibit 18.

23 Q And this is -- you've already started to negotiate a
24 future sale; is that right?

25 THE COURT: Future sale of what?

1 MR. BENNETT: Of the business, I think.

2 THE COURT: Which business?

3 Q Mr. Martorello, will you tell me which business? What
4 were you seeking to negotiate with Ms. Wichtman here?

5 A This is actually about negotiating the TLM broker fee out,
6 that we didn't want that. This isn't about the sale.

7 Q Okay. But here you acknowledge the possibility that in a
8 world where the CFPB could wipe out, in this case, Think and
9 Plain Green Loans, which were two other competitors; right?

10 A Yes.

11 Q That the valuation that was being discussed was too high?

12 A Correct. The TLM valuation was too high.

13 THE COURT: The valuation that who wanted?

14 THE WITNESS: TLM.

15 THE COURT: TLM is the entity that's associated with
16 Red Rock, and they got one percent revenue share, and the tribe
17 got one percent revenue share.

18 THE WITNESS: Yes.

19 THE COURT: And TLM was charging a broker fee to whom
20 for what purpose?

21 THE WITNESS: To LVD for having established the
22 tribal code and the lending laws and for finding me.

23 THE COURT: And you were trying -- you or the tribe
24 was trying to get the fee down?

25 THE WITNESS: Both of us.

1 THE COURT: So that's what we're talking about here?

2 THE WITNESS: Correct.

3 THE COURT: Excuse me, Mr. Bennett.

4 Q But the concern, the argument you were making is that
5 there was a risk that the Consumer Financial Protection Bureau
6 could wipe it all out?

7 A Correct.

8 Q So if you could take a look now, let's move ahead a little
9 bit of time, Exhibit 19 which has an email and an attached
10 letter. This is from you communicating or forwarding a CID
11 from the Department of Financial Institutions for the State of
12 Kentucky -- correct? -- or the Commonwealth of Kentucky?

13 A A C&D, yes.

14 THE COURT: C&D is meaning cease and desist letter?

15 THE WITNESS: Correct.

16 Q And if you look at the second page of the document, it was
17 addressed to a P.O. Box 704 to Pepper Cash. Pepper Cash was
18 the trade name for one of the Red Rock loan products; right?

19 A Correct.

20 Q And how is it that you got this instead of the tribe's
21 lawyer?

22 A Well, it looks like Brian McFadden forwarded it to me and
23 Justin, and then I forwarded it to the tribe's lawyer and
24 Jennifer Weddle.

25 Q And this -- let's skip ahead to Exhibit 25. Can you tell

1 me what Exhibit 25 is.

2 A Yes. Hold on one second, please. Sorry, it's very
3 lengthy. So I am -- this is December 2012. I have engaged
4 Deloitte & Touche to provide me with a valuation to determine
5 the tax impact if I am to, at the end of the year, convert
6 Bellicose Corporation into an LLC. So that would be a taxable
7 event, and I needed them to determine the valuation at that
8 moment in time to figure out what the tax impact would be from
9 the conversion.

10 Q So this time, did you want people to believe that the
11 company is worth a lot or worth a little?

12 A I mean, I wanted people to believe it was worth a lot, but
13 the technical valuation here and impact would be less the lower
14 the valuation was.

15 Q Well, I have us on the screen about 12 pages in but the
16 Bates number that ends 38990. I'd like to talk a little bit
17 about your email here. 38990, this was -- and this page isn't
18 part of the email that you sent on December 10th, 2012. Do you
19 recall writing this email?

20 A Vaguely.

21 Q And were you telling the truth in this email?

22 A Yes.

23 Q Okay. Now, recall your declaration under oath where you
24 said that your desire to sell Bellicose to LVD was not
25 motivated by impending threats of litigation or enforcement

1 actions by government agencies; correct?

2 A Correct.

3 Q Can you read the email starting "Hey guys"?

4 A Yeah. The whole thing? It's three pages.

5 Q Actually how about this. Let's start with the third
6 paragraph that begins "This industry is going to be living in."

7 A "This industry is going to be living in the grey area of
8 its legality for another year or two. State governments will
9 continue to sue tribes and me saying their state laws apply.
10 Tribes will continue to say their laws apply."

11 Q Next paragraph?

12 A "The FTC right now is suing a competitor (FTC vs. AMG
13 Services and Scott Tucker, which you can Google) and are
14 alleging three or four violations of consumer lending laws.
15 Our client arguably employs similar practices and the FTC has
16 begun investigations of several tribal lenders like our
17 client."

18 Q Can you read the next paragraph.

19 A "Class action lawsuits follow and are already following
20 Tucker's case with the FTC. Also see Martin Butch Webb/Western
21 Sky and look that up."

22 Q And that was a company, Western Sky was a -- was owned by
23 a member of an Indian tribe and affiliated with a non-Indian
24 tribe entity named CashCall; correct?

25 A I believe that's accurate, totally non-tribal.

1 Q Turn to the next page. Let's drop halfway down, and if
2 you could start where it says "More equity risk."

3 A "More equity risk you don't see in any business you'll
4 pull COE from: Several states make it a felony crime to make
5 loans over a certain rate or without a license. I had a 20
6 page document done for me to understand the risk that I have as
7 an equity owner for aiding and abetting felony crime in states
8 like Georgia and you will see the conclusion. It says
9 something like... 'yes, it is possible the state will come
10 after you for helping the tribe lend against their laws and
11 charge you with aiding and abetting as a felony crime in their
12 state (in some capacities penalty could be jail time), but we
13 don't think it's going to happen.' That's equity risk, how do
14 you price that into the equation?"

15 Q Now, here, your position was that the valuation of this
16 business, one where the state could come and actually prosecute
17 Matthew Martorello for violating criminal laws against usury,
18 meant that your business shouldn't be highly valued; correct?

19 A Correct.

20 Q And your declaration said that you didn't -- you were not
21 motivated by threats of litigation or enforcement risk by
22 government agencies.

23 A By impending threats, correct.

24 Q Let's continue. How about let's take a look at
25 Exhibit 26. Exhibit 26 is an email dated April 16, 2013, from

1 you to Rob Rosette regarding the significant ruling in Colorado
2 Western Sky case, order granting plaintiffs' motion for summary
3 judgment. Do you see that?

4 A Yes.

5 Q And this was an order that was sent to you by your lawyer,
6 Jennifer Weddle, explaining how the tribal lending defendants
7 in that case had lost and were ordered to pay restitution and
8 monies for violating Colorado law; correct?

9 A This was not a tribal lender. That's incorrect.

10 Q Well, it wasn't your model -- right? -- but it was
11 attempting -- the arguments that were being made were based on
12 the claim that there was sovereign immunity because the loans
13 were made on an Indian reservation?

14 A No, there was no -- it wasn't an arm of the tribe. They
15 didn't claim sovereign immunity. I think it was choice of law,
16 tribal or otherwise, but it was only an individual tribal
17 member, not a government arm.

18 Q And that you saw as significant or a big difference;
19 right?

20 A Yes. She said it would be significant.

21 Q Okay. So you were not at all fazed? This was not
22 something that caused you any angst.

23 A I was alarmed in 2012/2013.

24 Q Okay. We have a whole stack of ones bringing us up to
25 2016. Take a look at Exhibit 27. You were aware of this in

1 May of 2013. You received this communication from the
2 Department of Banking for the State of Connecticut; correct?

3 A Correct.

4 Q And this was related to the Castle Payday operation that
5 your company was servicing; correct?

6 A Correct.

7 Q Now, take a look at Exhibit 28, and this was an email of
8 July 23rd, 2013, that Jennifer Galloway, another lawyer, sent
9 to you regarding Scott Tucker having had to settle with the
10 Federal Trade Commission after a U.S. magistrate judge ruled;
11 correct?

12 A Yes.

13 Q And can you indicate how you responded to that? Read that
14 sentence at the top from you.

15 A Yes. I responded, "I'm told the judge's conclusion was
16 wrong. But is there anything anyone can do about it?"

17 Q Now let's turn to page -- Exhibit 29. This is an email
18 regarding the tribal lawsuit in New York. Were you aware that
19 LVD had participated in litigation against the banking
20 regulators in the state of New York arguing that essentially
21 the Red Rock lending model was legal?

22 A I was aware that they were suing the State of New York. I
23 don't know -- I couldn't articulate if that was the argument.
24 It was a preliminary injunction.

25 Q You wanted to keep LVD out of it because you didn't want

1 to draw attention; is that correct?

2 A I did want to keep LVD out of it. I recommended they
3 didn't do it. Why I made the recommendation, I think that was
4 part of the equation.

5 Q Can you read the first sentence in the email that you sent
6 to Karrie Wichtman, the very top.

7 A Yes. It says, "LVD also" does not -- or "doesn't
8 represent the best facts on this either this minute."

9 Q Can you take a look at Exhibit 30.

10 THE COURT: What page are you on on 29?

11 MR. BENNETT: 29 was the very top, Judge, first page.

12 THE COURT: I see it.

13 MR. BENNETT: First sentence.

14 THE COURT: All right. 30?

15 Q Mr. Martorello, this is an email that you sent to Karrie
16 Wichtman on August 9th, 2013, regarding Think Finance, and the
17 litigation -- well, multiple lenders related to the New York
18 and CFPB actions; correct?

19 A One second. Let's see. This is related to the Otoe
20 lawsuit against New York.

21 Q And the question again was whether or not LVD should
22 participate in a lawsuit in New York; correct?

23 THE COURT: Wait just a minute. It's related to what
24 lawsuit?

25 THE WITNESS: The lawsuit against the State of New

1 York, the preliminary injunction lawsuit in Otoe-Missouria.

2 THE COURT: You said Otoe lawsuit.

3 THE WITNESS: I'm sorry, Otoe, O-t-o-e.

4 THE COURT: Oh, the tribe's name.

5 THE WITNESS: Yes. The plaintiff tribe.

6 Q And could you read the first two sentences in the second
7 paragraph of your email.

8 A "LVD's house is not completely in order yet. Time is our
9 most important commodity right now. We don't have to be a
10 plaintiff, it will happen anyways with Think and Mark Curry.
11 RRTL/DCTF are too young for this right now."

12 THE COURT: What does that mean?

13 THE WITNESS: As you'll see down lower, I elaborate.
14 Too young, too small, too poor, not enough depth in the bench
15 with ACH and banks. So this was a time during Operation Choke
16 Point where all they had to do was call the bank and turn off
17 your bank account, and we couldn't defend ourselves.

18 THE COURT: But RRTL and DCTF means what?

19 THE WITNESS: Sorry. Red Rock Tribal Lending and
20 Duck Creek Tribal Financial.

21 Q Your paragraph 69 of your declaration says under oath that
22 your decision to sell Bellicose to LVD was not motivated by
23 impending threats of litigation or enforcement actions by
24 government agencies. That's what you said under oath; right?

25 A Correct.

1 Q Now, Big Picture Loans is what ultimately was created, as
2 we know, when Bellicose Sourcepoint were sold; correct?

3 A That's correct.

4 Q All right. And Big Picture Loans was actually registered
5 one month after those emails we've just been through; isn't
6 that correct? And I'm showing you right now Exhibit 33 which
7 is the internet registry record.

8 A I'm sorry, do you mean the entity or the domain was
9 registered?

10 Q Let's start with the domain.

11 A The domain, I'm sorry, it's not coming up.

12 THE COURT: What exhibit?

13 MR. BENNETT: This is 33, Your Honor.

14 A So the domain is registered September 18th.

15 Q And it was you or your companies that registered
16 bigpictureloans.com?

17 A I believe it was Phenomenon Marketing but a hired
18 marketing firm.

19 Q The firm hired by you or your companies?

20 A By our companies.

21 Q And, in fact, you set out shortly after to create a whole
22 set of marketing documents in the name of Big Picture; is that
23 correct?

24 A Yes. We had all that -- if you mean the branding
25 documents and imagery, yes.

1 Q The whole website was designed shortly after that; right?

2 A I believe it was shortly after that.

3 Q Now, you've -- again paragraph 69, you say that the threat
4 of enforcement actions and litigation was not a motivation for
5 why you wanted to move into the Big Picture project. Is that
6 still the answer you want to hold to now?

7 A Yes.

8 Q All right. Let's continue, let's go to document 34,
9 please. This is an email dated September 29, 2013; is that
10 correct?

11 A Yes.

12 Q And you wrote to the tribe's lawyers, to your brother, and
13 your lawyer that "We know LVD is the next tribe to receive a
14 CID, and we know registering gets us favored treatment for
15 voluntary compliance versus the absolute torment a CID would
16 be." This was discussing whether you would register your
17 relationship with Zion Bank; is that correct?

18 A No. This was discussing if LVD was going to register with
19 the CFPB.

20 Q Okay, and you believed they should?

21 A I recommended that they did because we have nothing to
22 hide and are fully federally compliant.

23 Q Let's take a look at Exhibit 36.

24 THE COURT: Excuse me. On that Exhibit 34, the
25 second paragraph says, "We know LVD is the next tribe to

1 receive a CID." What is a CID?

2 THE WITNESS: It's a civil investigative demand.

3 THE COURT: From the CFPB?

4 THE WITNESS: Correct.

5 Q So take a look at Exhibit 36. On October 3rd, 2013, you
6 learned that -- or I'd say October 3rd, 2013, after receiving a
7 cease and desist notice from the State of New York, you
8 notified Red Rock that you were going to stop lending to New
9 York consumers; is that correct?

10 A No, that is incorrect.

11 Q All right. What's incorrect about it?

12 THE COURT: Let's go somewhere else. Who received
13 the cease and desist order?

14 THE WITNESS: That was -- let me just check it. I
15 think it was Red Rock Tribal Lending, but it was one of the
16 tribal lending entities.

17 Q I'm reading now from page five of this email.

18 THE COURT: Wait a minute. The first paragraph, the
19 bottom says all. Who is it from; Karrie Wichtman? Is she the
20 author of that on the first page?

21 THE WITNESS: Yes.

22 THE COURT: "Please find approval documents for the
23 consideration of the co-managers of RRTL and DCTF (the TLEs)."
24 So that's Red Rock and Duck Creek, and TLEs is tribal lending
25 entities; is that right?

1 THE WITNESS: That's correct.

2 THE COURT: "Issuing a moratorium on consumer loans
3 in the state of New York and the winding down of the business
4 currently existing in the state of New York immediately until
5 further notice, which I understand only constitutes five
6 percent of the current business of RRTL and DCTF, will have
7 little to no effect in tribal net profits."

8 The way I read that is they're going to stop lending
9 in New York. Is that correct or incorrect?

10 THE WITNESS: That is correct.

11 Q So this is October -- this is the first week of October of
12 2013 that this exchange in Exhibit 36 takes place; correct?

13 THE COURT: Wait a minute. Before this date,
14 October 3rd, 2013, had RRTL and DCTF gotten cease and desist
15 notices from the State of New York in respect of their lending?

16 THE WITNESS: That is correct.

17 THE COURT: All right, sorry.

18 Q So -- I'm going back to it again. Paragraph 69 of your
19 declaration says "the decision to sell Bellicose to LVD was not
20 motivated by the impending threats of litigation or enforcement
21 actions" --

22 THE COURT: I believe everybody in this thing can
23 recite that thing backwards, that one sentence. Just ask the
24 question. I think he knows the topic upon which you are doing
25 your examination at this time, and I do, too, so let's go

1 ahead.

2 Q So take a look at Exhibit 37 now.

3 THE COURT: She recommended approval of these
4 documents stopping this lending. Did the lending subsequently
5 stop in New York?

6 THE WITNESS: I just correct that. I think we
7 recommended we're not willing to work for you if you're going
8 to lend to residents of New York, and she said you don't have
9 the right to tell us where to lend, and eventually she complied
10 with that suggestion.

11 THE COURT: That isn't what happened here. It said
12 from her, and she says, "All, please find attached approval
13 documents for the consideration of co-managers of RRTL and DCTF
14 (the TLEs) issuing a moratorium on consumer loans in the State
15 of New York." Was that approval granted? Did they stop
16 lending?

17 THE WITNESS: Yes.

18 THE COURT: And then the winding down of the business
19 currently existing in the state of New York. What does that
20 mean? How do you wind down business in New York?

21 THE WITNESS: Um, it's in here if you go back to the
22 prior email, I believe.

23 THE COURT: Okay. In the same chain you mean?

24 THE WITNESS: Yes. So the first emails are at the
25 back here, and I believe --

1 THE COURT: First email is from you; right?

2 THE WITNESS: Yes.

3 THE COURT: The first email is to you, and it's from
4 chairman and team; right? That's what you are talking about?

5 THE WITNESS: Page five from me to the chairman and
6 the co-managers and Karrie and my lawyer.

7 THE COURT: Okay. So is there something in there
8 about winding down?

9 THE WITNESS: Yes, it's on page six, the second
10 page -- the next page.

11 THE COURT: Hold on, I'll get there. "And we do not
12 believe we should service any New York loans"; is that what you
13 are saying?

14 THE WITNESS: Yes, and then the next --

15 THE COURT: "We are willing to wind down our New York
16 services and see existing loans through to their completion but
17 we simply cannot flaunt the clear ruling from Judge Sullivan's
18 order however legally incorrect it might be."

19 THE WITNESS: Correct.

20 THE COURT: Now I understand. Go ahead. Pardon me.

21 MR. BENNETT: Yes, sir.

22 Q Mr. Martorello, can you turn to Exhibit 37, please.

23 A Okay.

24 Q Now, I understand I'm not going to reread the declaration
25 topic that refers to selling Bellicose to LVD. What was the

1 subject of the email at Exhibit 37 dated October 14th, 2013,
2 the next week or so after the New York shutdown?

3 A It reads, "LVD to take ownership of Bellicose VI."

4 Q This was an email that you sent to Mr. Rosette; is that
5 correct?

6 A Yes.

7 Q And this was one of the emails where you begin to flesh
8 out what the sale of Bellicose to LVD was going to look like in
9 your view; correct?

10 A That's incorrect.

11 Q All right. Were there earlier emails than this one?

12 A There were on a different model, and then there's this
13 concept, and then there's the actual concept that got done in
14 2016.

15 Q So when I said that -- so, in fact, we've just now gone
16 through about a quarter of these emails that we have here with
17 your discussion about the regulatory threat. Your discussion
18 about the sale of Bellicose to LVD actually occurred earlier
19 than this one and during those others.

20 A Not exactly. The conversations in 2012, early 2013, were
21 to sell a copy of the intellectual property to the tribe and
22 engage in a ten-year contract to help them build their own
23 Sourcepoint so that they could be self-sufficient.

24 Q But recall that you earlier confirmed to your investors
25 that Sourcepoint actually owned that intellectual property;

1 right?

2 A I don't recall that.

3 Q That's what you actually believe today, is that
4 Sourcepoint was required to give its intellectual property to
5 the tribe?

6 A Through the purchase. They would have sold -- our
7 intellectual property was sold to the tribe.

8 Q I mean the original. All the intellectual property
9 generated by Sourcepoint was to go to Red Rock. That's the
10 view you came up with later; right?

11 A I'm sorry. You said all of the original intellectual
12 property generated by us through our services went to Red Rock,
13 yes.

14 Q Yes.

15 A Agreed.

16 Q And that included marketing methods, financial
17 forecasting, budgets, standard operating procedures for leads
18 and open accounts, collections strategy, vendor relationship,
19 all that was supposed to be included; right?

20 A That was the IP that they already had, yes.

21 Q But you didn't give that to them. Red Rock never got
22 that; right?

23 A They did.

24 Q They did?

25 A Yes.

1 Q Now, if you take a look at Exhibit 37, here you are
2 proposing a structure to Mr. Rosette; is that correct?

3 A In some form or another, yeah.

4 Q You are proposing some form or another of a structure by
5 which LVD will take ownership of Bellicose; correct?

6 A Yes.

7 Q And one of them was that you would give majority ownership
8 but zero profits. That's the fourth bullet point down; right?
9 That LVD will own 51 percent of equity but zero profits until
10 month 49; correct?

11 A Hold on one second, please. Yes, I'm sorry. I'm
12 struggling because that sounds incomplete and inaccurate, but
13 that is what it says.

14 Q But you wrote it; right?

15 A I did.

16 Q And then the last sub bullet point under specific to
17 Bellicose SPVI equity says, "All structured to provide all
18 entities sovereign immunity." Do you see that?

19 A Yes.

20 Q And that was important to you because of all the pending
21 threats of litigation and enforcement actions by government
22 agencies; correct?

23 A It was a requirement of the tribe.

24 Q This was your email to them, and it was all entities, not
25 just yourself -- I mean not just the tribes; right?

1 A In theory I think yes, it was -- I know it was their
2 requirement, but I think the 49 percent owner would have been
3 my company which would have -- if it passed the
4 arm-of-the-tribe test had immunity.

5 Q And you needed that immunity because of the impending
6 threats of litigation and enforcement actions by government
7 agencies.

8 A Not necessarily. They're not immune from federal actions.

9 THE COURT: Who is not immune?

10 THE WITNESS: The tribe.

11 THE COURT: They're not immune from federal actions?

12 THE WITNESS: I'm sorry, from the FTC or CFPB.

13 Q Take a look at Exhibit 38. This is an email that we were
14 able to obtain from a third party, former tribal council member
15 Joette Pete, P-e-t-e. But this is an email that you sent to
16 the tribal council following the email we've just discussed
17 that you sent to Mr. Rosette, this one dated October 14th,
18 2013; is that correct?

19 A Yes.

20 THE COURT: What exhibit are you on?

21 MR. BENNETT: I'm on Exhibit 38, Your Honor.

22 Q Let's take a look at Exhibit 39. This is an email that
23 Bellicose's general counsel sent at your instruction, sent to a
24 third-party marketing company, Phenomenon Marketing; is that
25 correct?

1 A Yes.

2 Q The first sentence says, "Given the various challenges and
3 legal uncertainty in the lending industry, Bellicose VI, LLC,
4 is in the process of reassessing and re-prioritizing current
5 projects and relationships with third-party vendors"; do you
6 see that?

7 A Yes.

8 Q These are -- the challenges and legal uncertainty in the
9 lending industry are those we've talked about with various
10 state regulators and class actions; correct?

11 A Those were Dan Gravel's words. I would presume that was
12 what he was referring to.

13 Q Okay. Take a look at Exhibit 41. Exhibit 41.

14 THE COURT: Do you have a copy of this number 39, Mr.
15 Martorello, that's down here? It says you got a copy of it.

16 THE WITNESS: It does say that. I do remember Mr.
17 Gravel showing me the letter before he sent it.

18 THE COURT: Before he sent it.

19 THE WITNESS: Yeah.

20 Q Exhibit 41, this was an email communication that you had
21 just passed along, not specifically about Red Rock, to Ms.
22 Wichtman when you received it from somebody in the United
23 Kingdom; correct?

24 A Yes.

25 Q And you note in there that the industry, particularly with

1 the ruling in New York, could jeopardize -- and class actions
2 and personal threats of enforcement against individuals by
3 regulators has everyone spooked. And this was communication
4 that you sent to Ms. Wichtman a couple weeks after you made the
5 first -- the proposal, rather, October 14th proposal we just
6 talked about; right?

7 A Yes.

8 Q Now, take a look at Exhibit 42. This is an email that you
9 sent to Karrie Wichtman responding to her request for
10 consideration of whether you would agree to pay some of the
11 legal bills related to the New York court litigation and Second
12 Circuit appeal; correct?

13 A Sorry. Yeah, she's asking contribution for the legal
14 fight that they brought against New York, yes.

15 THE COURT: "They" meaning?

16 THE WITNESS: The tribe is requesting that we fund
17 the litigation against New York or help fund or contribute to
18 it.

19 THE COURT: And Red Rock sued, or the tribe sued New
20 York seeking to enjoin certain conduct on their part, and that
21 led to the decision of the district court, Judge Sullivan and
22 subsequently the Second Circuit, and it's that litigation you
23 are being asked to contribute to fund; is that correct?

24 THE WITNESS: That's correct.

25 THE COURT: All right, I'm with you, Mr. Bennett.

1 What about it?

2 Q So in the third paragraph you respond "And considering."

3 Can you read those two paragraphs.

4 A "Considering, a) where this puts us (i.e. SPVI is about to
5 be discovered and will need extreme resources to defend itself
6 against all kinds of aiding and abetting and 'true lender'
7 claims come Q1; b) and the very significant possibility that
8 should we even survive long enough to get there, I'll have to
9 defend myself even personally (in more than civil matters) with
10 no ongoing business or revenue at all should the decision be
11 made in the appeal that the activity is in fact off reservation
12 (a certain end to the industry). Or if LST folds, I still have
13 those battles to face now on account of this suit."

14 Q All right. Take a look at Exhibit --

15 THE COURT: Had Bellicose been sold yet by the time
16 of this memo?

17 THE WITNESS: No. It was 2016 when it was sold.

18 Q The transaction was formally in what, January of 2016?

19 A Yes.

20 Q And the negotiations were ongoing even as we're going
21 through this chain right here; correct?

22 A The transaction began negotiated August 15th of 2014.

23 Q The transaction by which LVD purchased Sourcepoint.

24 A Correct.

25 Q Okay. Take a look at Exhibit 46.

1 THE COURT: Are you moving to a different topic now?

2 MR. BENNETT: No, sir.

3 THE COURT: How much more have you got on this topic?

4 MR. BENNETT: I will move quickly.

5 THE COURT: I'm just asking how much more you've
6 got --

7 MR. BENNETT: Judge, I probably have another
8 30 minutes.

9 THE COURT: We're going to take a 20-minute recess.
10 All right.

11 (Recess taken.)

12 THE COURT: All right, do you want to proceed.

13 Q So we were --

14 THE COURT: You were about to get into Exhibit 43, I
15 think.

16 MR. BENNETT: Yes, sir.

17 Q Exhibit 43, this is an email chain in December 31st, 2013.
18 The top of it is from Mr. Martorello to Nicole St. Germain,
19 G-e-r-m-a-i-n, and -- with the Rosette law firm amongst others.
20 Do you recall this email, Mr. Martorello?

21 A Generally.

22 Q You've reviewed it before today; right?

23 A Correct.

24 Q And this was the continuing discussion about finding a way
25 for -- to get the tribe to acquire Sourcepoint or Bellicose;

1 correct?

2 A No, incorrect. This was the end of the discussion to sell
3 51 percent of Bellicose to the tribe. This is about where that
4 conversation ended.

5 Q Okay. And I'm looking at the middle of this. The
6 question was as to what percentage of equity would go to the
7 tribe. Is it fair to say that your position was the percentage
8 of equity that went to the tribe was not the difficult part, it
9 was the amount of money that would go to the tribe; right?

10 A One second, please. I don't know that I would -- I don't
11 know which one was more difficult. I hadn't really thought of
12 it that way.

13 Q All right. Well, so I'm looking at under subparagraph D
14 on the proposed changes, the bottom half of that, that big
15 paragraph over to the right, it says, "What I think you'd tell
16 a court that would challenge the immunity." Do you see that?

17 A I do.

18 Q And "is that if a deal were not done," and that means a
19 deal by which the tribe would buy Sourcepoint; right?

20 A 51 percent, yes.

21 Q You would tell them that, A, if Sourcepoint -- the tribe
22 didn't know if, A, Sourcepoint would be around in ten days
23 given the industry; B, executed its termination provision in
24 accordance with the service agreement; or, C, hike rates.
25 That's what you wrote; right?

1 A That's right.

2 Q And you were saying that implicitly the tribe needs to
3 understand that Sourcepoint was intending or had the right to
4 walk?

5 A We had that right, yes.

6 Q And this was an implicit threat or maybe explicit threat
7 that if the tribe didn't buy your business, that you might
8 walk?

9 A I disagree. Because it does say I thought we agreed to
10 status quo on the next page.

11 Q Okay. So let's take a look at the second page at the top.
12 Just a detour here. This was your writing where you said if
13 this issue isn't worked out -- "Management - if this issue
14 isn't worked out in some very particular way, the deal just
15 won't get done." What was the management issue that had to be
16 worked out in a very particular way, otherwise you wouldn't do
17 a deal?

18 A Yeah, it says it here. "All the investors (institutional,
19 personal, and myself) won't allow the deal to occur without
20 being 100 percent certain that adequate management resources
21 are in control." That was the first major hurdle to
22 accomplish, so it was just that they needed to have adequate
23 management to run a tribal servicing entity or institutional
24 investors wouldn't lend to them.

25 Q Take a look at Exhibit 53, please. This is an email from

1 you to Robert Rosette dated August 25th, 2014. You were
2 sending this August 2014 to the tribe's lawyer. Can you read
3 the sentence at the top.

4 A "So here is what I'm thinking (for now). If we can't
5 reach terms with LVD to buy SPVI, then SPVI will be sold to
6 another tribe (likely Middletown). If we do reach terms, some
7 of my team will likely proceed with Middletown in a new entity
8 to help them stand up a business. So I'm sort of on hold, and
9 so is Middletown, until we know if LVD is going to be able to
10 come to terms on SPVI or not."

11 THE COURT: What exhibit are you on?

12 MR. BENNETT: Exhibit 53.

13 Q So August 25th, 2014, is ten months after the October 2013
14 first proposal where you sent your suggested structure for LVD
15 to purchase Bellicose; right?

16 A Yes.

17 Q And the tribe still had not agreed to buy your business,
18 and this was a threat to the tribe's lawyers -- correct? --
19 that if it didn't come to terms with you, then you were going
20 to sell it to a competitor?

21 A Incorrect.

22 Q Well, did you -- were you meaning what you wrote in this
23 email to the tribe's lawyer?

24 A Yes. What you were incorrect about is the October to
25 December 2013 deal died, and we chose status quo. A week

1 before this, or ten days before this, the tribe sent a deal to
2 buy the whole company on August 15th, and their lawyers sent --

3 THE COURT: Deal to buy what?

4 THE WITNESS: Offer, term sheet to buy all of
5 Bellicose. That was like, I think, August 15th, and so we had
6 a new, totally new deal, totally new structure. So I think
7 that's where the incorrect part is.

8 Q Okay. So what you are saying is that whenever I'm
9 referring to the purchase of your business that became the Big
10 Picture Loan/Ascension business, that you characterize that as
11 totally unrelated to all of the negotiations that had taken
12 place in 2013, 2014?

13 A They were very different.

14 Q The structures are different; right?

15 A One was an IP copy sale. One was 49 percent, and then the
16 tribe came and wanted the whole thing.

17 Q So let's take a look at Exhibit 54. Before there was Big
18 Picture Loans, you were trying to pitch the tribe to shift its
19 brand to something called Chorus Loans; correct?

20 A No. That was a name they picked from several that I
21 provided to them.

22 Q So you provided several possible names for a new business.
23 One was Chorus Loans, and that's the one they picked; correct?

24 A Correct.

25 Q Taking a look at Exhibit 54, the bottom email, you

1 received a proposed resolution approving Chorus Loans in Word
2 document format; correct?

3 A Correct.

4 Q And because that -- it was customary for you to have to
5 pre-approve tribal resolutions related to your business;
6 correct?

7 A I testified earlier that is incorrect.

8 Q Okay. So two resolutions we know of that that's true on,
9 though; right?

10 A It says final. It doesn't say that I'm reviewing
11 anything. I don't know what the exhibit looks like, and I
12 think we talked about the other one.

13 Q So then you say, "Okay," and this is October 25th, '14,
14 "sorry for the runaround here, Karrie... Chorus has been sold.
15 Attached is another really great brand with just as much
16 energy, money, and time spent in developing. Assuming LVD buys
17 SPVI, BigPictureLoans," with the three words all together,
18 BigPictureLoans.com but the three words all capitalized, "would
19 be an excellent domain. If LVD doesn't buy SPVI, then
20 firstnationloans.com is the domain we can provide. We haven't
21 gotten around to doing the build-out or design."

22 And so right above, you respond to her question,
23 "Which one do you want me to use" -- this is Karrie Wichtman
24 the Rosette lawyer, and you say, "BigPictureLoans.com";
25 correct?

1 A Correct.

2 Q That's how Big Picture, the brand, and bigpictureloans.com
3 came into being; correct?

4 A That's how the name was selected.

5 Q Taking a look at Exhibit 55, please. They selected that
6 name; right?

7 A Correct.

8 Q Now, this email, Exhibit 55, is the same email as 54
9 except it didn't have that top part where you say use Big
10 Picture Loans; right?

11 A Correct.

12 Q Except this one also has an attachment. If you look at
13 the second page, Phenomenon, your marketing company, has
14 created the bigpictureloans.com website; right?

15 A Right.

16 Q And this was even before the tribe had picked it; right?

17 A Yes. They had created several names before the tribe
18 picked this one.

19 Q Not just several names but everything. The privacy
20 policy, the forms, everything had been designed, the marketing
21 materials, all created before you even informed Ms. Wichtman
22 about Big Picture Loans; correct?

23 A I never noticed that. I presume they took the same text
24 from Castle Payday or something and put it on here.

25 Q By "they" took the --

1 A The marketing company.

2 Q Your marketing company, Phenomenon?

3 A Phenomenon.

4 Q The one you just terminated because of all the problems in
5 the lending industry. We went through that email a short time
6 ago; right?

7 A Yeah.

8 Q This was done before you terminated them for future
9 service; right?

10 A Correct.

11 Q You've had this in the bank for awhile?

12 A I hired them July 2013. So since August 2013.

13 Q Right, but certainly -- did you rehire them after you
14 terminated them?

15 A For limited work, yes.

16 Q But not for this; this was done before you terminated
17 them?

18 A Yes, I believe it was a different statement of work for
19 this versus the subsequent determination work they did.

20 Q Trying to find the date of that. So this is Exhibit 39
21 we'll flip back to real quick. So Exhibit 39 is the letter
22 that we've talked about, Mr. Gravel terminating the agreement
23 to use the services of Phenomenon Marketing; right?

24 A Correct.

25 Q And so now going back to 55 again -- I'm sorry for all the

1 paper movement. Going back to Exhibit 55, we see the date on
2 the front of the marketing presentation which is the second
3 page of Exhibit 55, and it says September 23rd, 2013; do you
4 see that?

5 A Yes.

6 Q So you hired Phenomenon, they designed the new
7 bigpictureloans.com, and, in fact, it includes Red Rock in
8 here; right?

9 A I'm sorry, how do you mean?

10 Q Well, if you'll take a look at --

11 THE COURT: What includes Red Rock? You said "it."
12 That's an indefinite pronoun.

13 MR. BENNETT: I'm sorry.

14 Q The privacy policy, for example, which is within the
15 PowerPoint, let's see, after the cover or including the cover,
16 one, two, three, 13, page 13 --

17 THE COURT: What's at the head of it?

18 MR. BENNETT: Says privacy policy at the top.

19 THE COURT: What about it?

20 MR. BENNETT: It says privacy policy, Red Rock Tribal
21 Lending, LLC, doing business as Big Picture Loans.

22 Q Mr. Martorello, so when you were speaking to the tribe's
23 lawyer, Karrie Wichtman, you told her that chorusloans.com had
24 been sold and that she should use bigpictureloans.com because
25 you thought it would be an excellent domain. That was -- at

1 that point, you knew you were already sitting on all this
2 material for Big Picture. You had been sitting on it for a
3 year?

4 A Correct.

5 Q Now, the problems with regulators did not end in 2013 or
6 2014; right?

7 A Which regulators?

8 Q Well, state and federal regulators.

9 A The federal regulators as far as FDIC/OCC did end in early
10 2014. FTC really was a nonissue after 2012. CFPB, probably
11 more like '15 or something, 2016.

12 Q And it continued -- the CFPB risks and state regulators
13 continued as a risk to you all the way up until the actual
14 consummation, formal transaction of the sale of Big Picture and
15 Ascension, or the merger that became Big Picture and Ascension;
16 correct?

17 A In a much more limited way.

18 Q Between 2013 and 2014, you continued to receive -- the
19 companies continued to receive communications from state AGs,
20 cease and desist orders for example; correct?

21 A Correct.

22 Q And did that ever abate while Red Rock was around?

23 A That was from day one and probably still continues today.

24 Q Okay. And in October of 2014, you were informed that the
25 Second Circuit, Court of Appeals for the Second Circuit had

1 affirmed the district court's decision in the New York matter;
2 right?

3 A That's right.

4 THE COURT: When?

5 THE WITNESS: October 1st, 2014.

6 Q Take a look at Exhibit 65, please. This is an email from
7 you to Karrie Wichtman dated November 11, 2014; is that
8 correct?

9 A That is correct.

10 Q And you were, at this point, discussing, because of the
11 takeaways from the Second Cir -- or in part because of what you
12 learned from the Second Circuit's panel's comments, you changed
13 over to Big Picture Loans as the brand; is that correct?

14 THE COURT: What was the question again?

15 MR. BENNETT: Sure.

16 Q The move to Big Picture Loans and the creation of Big
17 Picture Loans as a company occurred, in part, because of the
18 fear about what the Second Circuit was going to do.

19 A No, that's not correct.

20 Q That's not true. Take a look at 65.

21 A Yes.

22 Q You begin at the top by saying, "What were some of the key
23 takeaways from the Second Circuit's panel's comments?" Do you
24 see that?

25 A Yes.

1 Q And then you begin to discuss what to do with respect to
2 the different vendors and the move from Red Rock and Castle
3 Payday; correct?

4 A There's a whole lot more in here. I'm not sure what
5 you're trying --

6 Q I'm trying to get to the second page. At the top, Ms.
7 Wichtman had sent you an email, and the first sentence of it
8 says, "As far as Big Picture - BPL has already been created as
9 a company so legal work has already been done there aside from
10 contract review and legal issues resulting from migration and
11 whatever else comes out of your conference room systems chat."
12 Do you see that?

13 A Yes.

14 Q And so as of this point, which is November 2014, you are
15 about to make the transition fully from Castle Payday over to
16 Big Picture Loans; correct?

17 A No. That must have happened roughly a year later.

18 Q The move to Big Picture Loans?

19 A Yes.

20 Q Okay.

21 A As an operating business, yes.

22 Q All right. Can you take a look at --

23 THE COURT: Wait a minute. What?

24 THE WITNESS: I said as an operating business, yes.

25 Q Can you take a look at Exhibit 67. This was in

1 November 2014, November 24, 2014, you receive a copy of a cease
2 and desist notice sent by the consumer protection section of
3 the Department of Law at the State -- for the State of
4 Colorado; correct?

5 A I don't know if I received it. I don't see me on an email
6 or recall it.

7 Q Do you recall it?

8 A No, I don't recall it.

9 Q Take a look at Exhibit 69. This is an email from you to
10 Michelle Hazen, known here as Shelly H, and then her email with
11 your comments at the end of each paragraph. What was the
12 purpose -- what was the subject of her email? Why was she
13 communicating with you?

14 A I'm sorry. Let me look at this. It's kind of a long
15 thread. It looks like we were discussing what the 2015 budget
16 would look like. They sent us their proposed budget, and we
17 had disagreement about some of the deductions to our revenue.

18 Q Well, in fact, one of the reasons was that they started
19 paying their general manager, an interim general manager,
20 salaries without your approval of those ranges; correct?

21 A I'd have to take a close look and see. I'm sorry, where
22 would I find this, please?

23 Q How about on the second page. The bottom of the second
24 page is your email that had been sent to Ms. Hazen.

25 A Starting with "Hi guys"?

1 Q Yes.

2 A Okay. Let me finish the paragraph, please. There was --
3 it seems like -- and I vaguely recall this. There was a salary
4 study sent over to Duck Creek for a position or positions with
5 some generalized sort of demographic data and geographies and
6 things, and that's what I see in that part. Is there another
7 part you'd like me to --

8 Q Well, the first is your -- you have input here on the
9 salary of individuals at Duck Creek; right? Those were not
10 your employees purportedly; right? Those would have been Red
11 Rock?

12 A They were Duck Creek employees as a PEO to Red Rock, so
13 they serviced both entities. But they would -- if there was an
14 annual increase over five percent for the total line item, then
15 we'd have to agree to that.

16 Q But that would have been an entity that you would have
17 claimed had tribal immunity; right? Duck Creek.

18 A Duck Creek's labor expense, I think the documents in the
19 servicing agreement say that there was a five percent annual
20 increase without mutual agreement by the parties, and so I
21 think that's what we're talking about -- something -- some
22 growth in excess of the terms of the contract.

23 Q And the third page, for example -- about halfway down it
24 says, "I can't say yet" -- this is you. "I can't say yet about
25 hiring a compliance manager, but I don't think it's necessary

1 given the seven or eight touches everything receives today from
2 trained personnel and the deeper touch of the Duck Creek TF
3 compliance board." You wrote that; right?

4 A Yes.

5 Q So they wanted to hire a compliance manager, and you said
6 no?

7 A I said I can't say yet. I don't know if I said no.

8 Q But it was your decision?

9 A Well, she says here we will not hire a compliance manager
10 in the prior email.

11 Q Dropping two paragraphs down, under travel, you confirm
12 your agreement -- right? -- that Ms. Hazen can attend the NAFSA
13 which is a trade group for Native American Financial Services
14 Association; right?

15 A That's the tribal lenders, yeah.

16 Q And then OLA, the Online Lender Alliance, you indicate
17 that maybe she shouldn't attend that, but, again, you're
18 providing the approval as to whether Michelle Hazen can attend
19 these industry trade groups because, in theory, it would cost
20 money; correct?

21 A It says here that I --

22 THE COURT: Correct or not correct?

23 THE WITNESS: Not correct.

24 Q The next paragraph says, "A lot of this will be moot if we
25 can get the sale across the finish line, so my focus is much

1 more so on exactly that and what the purchased business will
2 exactly do after acquisition (facilitating a transition to the
3 new owner)." Do you see that?

4 A Yes.

5 Q So what you are saying is that if they'll buy your
6 business, then you could afford -- it could afford to do
7 certain other things; right?

8 A No, I wouldn't characterize it that way.

9 Q Read the rest of that paragraph.

10 A Would you like me to read it out loud?

11 Q Let me just ask you, the rest of the paragraph --

12 THE COURT: Read it to yourself.

13 THE WITNESS: Okay. Okay, I've read that.

14 Q So your point was that they'll be able to save money if
15 you do it that way, and, therefore, they would have the freedom
16 to do the hiring, make the raises, and do the industry travel
17 they were requesting.

18 A I don't think that clarifies what I was saying, no, I
19 disagree.

20 Q Take a look at the next page which -- actually two pages
21 in. On the bottom right it has Bates number 43489. This is
22 your email, and you state, "The recommended revisions to the
23 budget sent by Duck Creek were not accepted by SPVI." Do you
24 see that?

25 A Yes.

1 Q So the sale actually occurred, the technical sale occurred
2 in, you said, 2016; correct?

3 A Yes.

4 Q Take a look at Exhibit 71. Is it still your position that
5 you weren't negotiating during this time period here?

6 A Oh, no, we were still negotiating.

7 Q So Exhibit 71, you were continuing --

8 THE COURT: Time period here is January of 2015.

9 MR. BENNETT: Yes, sir.

10 THE WITNESS: Correct.

11 Q And this was your email, Exhibit 71, detailing the
12 different things that you were going to have to do and the
13 employment details for your folks, that is the employees of
14 Sourcepoint, how were they going to be employed; correct?

15 A Hold on one second, please. It looks like it's addressing
16 the employment details of my folks, is what it says, for the
17 transaction.

18 Q And in particular Brian McFadden and Simon Liang; right?

19 A Among others. I see Chelsea in here as well.

20 Q And your brother Justin as well; correct?

21 A I don't see their names, but it would have been everybody.

22 THE COURT: You are dropping off.

23 THE WITNESS: I'm sorry. I said I don't see their
24 names, but it would have been everybody at the company.

25 Q So take a look at Exhibit 72 and then Exhibit 73. These

1 are the operating agreements for -- actually it says first
2 amended operating agreement of Big Picture Loans dated February
3 of 2015 -- that's Exhibit 72 -- and the operating agreement of
4 Ascension February 4th, 2015; is that right?

5 THE COURT: 72 doesn't have a day in it.

6 MR. BENNETT: 72 does not have a date in it, Your
7 Honor.

8 THE COURT: It says February, but it doesn't have a
9 day of the month. Is this the final?

10 MR. BENNETT: Says first amended, Your Honor. It's
11 what they gave us.

12 THE COURT: Is it the final document, or is it some
13 kind of --

14 MR. BENNETT: It's signed, so I believe it's final.

15 Q So Big Picture Loans was actually created sometime at
16 least prior to February 2015 or prior to the date of this first
17 amended operating agreement; right?

18 A Yes.

19 Q And Ascension was created by operating agreement
20 February 4th, 2015; is that correct?

21 A At least the operating agreement date is that, but I don't
22 know if it was formed prior or the same day.

23 Q Now, at this time, in 2015, there wasn't anything for
24 Ascension to do -- right? -- because you still had Sourcepoint;
25 correct?

1 A That's correct.

2 Q And then if you'll take a look at Exhibit 76, you created
3 Eventide by operating agreement February 9th, 2015, just right
4 after the Ascension creation; correct?

5 A Correct.

6 Q And this is the operating agreement for Eventide; right?

7 A Yes, it looks accurate.

8 Q Take a look --

9 A Yes, yeah.

10 Q Take a look at the last page of Exhibit 76 while we're
11 here. What is Kairos Holdings which apparently owned
12 100 percent of the voting interest, K-a-i-r-o-s, Kairos
13 Holdings, LLC?

14 A Yes, Kairos was -- I don't want to speculate, but I
15 believe it was the owner of Bellicose.

16 Q Who owns Kairos Holdings, LLC?

17 A The Cook Islands trust.

18 Q Which Cook Islands trust?

19 A Bluetech.

20 Q And who are the beneficiaries of the Bluetech Cook Island
21 trust that owns all of Kairos Holdings which owns 100 percent
22 of the voting interest of Eventide?

23 A My wife and my future -- my current kids and any future
24 descendants.

25 Q Where did you learn about the Cook Island trust as a place

1 to store money?

2 A I didn't learn about it as a place to store money.

3 Q What did you learn about it?

4 A It was in 2010, and probably an attorney of some kind.
5 I'm not sure.

6 Q Mark Curry, who is Mark Curry?

7 A Mark Curry was, I think, or is the maybe executive of
8 American Web Loans.

9 Q Which is another lending entity, in fact one that's also
10 now sued in this same court; right? Are you aware of that?

11 A I think it is a lending entity. Is it a lending entity or
12 a servicer? I'm not sure.

13 Q It's associated with an Indian tribe?

14 A In some way, yes.

15 Q And it had to defend the same types of true lender
16 arguments that you've had to defend; correct?

17 A I believe so.

18 Q Mark Curry would be the Matt Martorello of that --

19 A I don't know --

20 Q He's the non-Indian individual that invested money and
21 supposedly owned a servicing company; right?

22 A I'm not sure of the facts of Mark Curry.

23 Q But Mark Curry is actually the one who talked to you about
24 putting your money in a Cook Island trust; right?

25 A No. I never knew Mark Curry in 2010.

1 Q When did you first create Bluetech and direct its
2 ownership of Kairos?

3 A 2010. And I didn't direct. I'm sorry, I didn't direct
4 the ownership of Kairos or something that you had said.

5 THE COURT: I'm losing what you are saying.

6 THE WITNESS: I'm sorry. I said I didn't direct the
7 trust ownership of the entity.

8 THE COURT: Who did?

9 THE WITNESS: The trustee.

10 THE COURT: Who is the trustee?

11 THE WITNESS: It's Asia City Pacific Limited, Tine --
12 I can't remember her last name right now. Tine, T-i-n-e,
13 P-o-i-n-t-e, Pointe.

14 Q So taking a look at Exhibit 80, please, this was an email
15 chain, the top email of which was Matt Martorello to Karrie
16 Wichtman dated February 23rd, 2015, and you are discussing here
17 the possible purchase that we've just talked about -- right? --
18 of Sourcepoint into Ascension?

19 THE COURT: You mean Ascension is going to buy
20 Sourcepoint?

21 MR. BENNETT: I think the assets that are Sourcepoint
22 will become part of Ascension.

23 A It looks like we're talking about assigning a contract or
24 how we will go about assigning Sourcepoint contracts into the
25 buyer or ultimately to Ascension.

1 Q Okay. And Ms. Wichtman, at the second page of the
2 document, her email up top, this was at 9:16 p.m. on
3 February 23rd, 2015. She says about this particular vendor --
4 O2 is a vendor; correct?

5 A Yes.

6 Q And the tribe, you are asking for approval of a contract
7 with O2; right?

8 A I'm sorry, I'm not sure.

9 Q The contract price is going up with O2?

10 THE COURT: What are you talking about? I don't know
11 what O2 is, I don't know what contract price you are talking
12 about, price going up. What on earth are we talking about
13 here?

14 MR. BENNETT: Yes, sir.

15 Q So O2 was a vendor that Sourcepoint had used; correct?

16 A Correct.

17 Q And O2 was going to have an increase in its contract price
18 or some other change in its contract terms that you were
19 telling Ms. Wichtman that the tribal entities would have to
20 agree to, they need a new resolution for that; right?

21 A We're discussing it. I don't see myself saying that
22 specifically.

23 Q Okay. So now I've highlighted part of the paragraph that
24 is in the middle of page two, and the sentence begins, "Also, I
25 can see the logic in an increase in contract price." Do you

1 see that?

2 A So this is Karrie's email.

3 Q It is.

4 A Yes, I see her saying that.

5 Q And she says, "However, the tribe needs to understand what
6 O2 did and what they will do under the new terms. Also, how
7 does putting a company in charge of things Matt used to do help
8 the tribe learn the business? At the end of the day,
9 especially if you guys are out in two years, with the tribe
10 holding all the cards they need to be playing with a full deck.
11 Sounds to me like we will be short some aces." Do you recall
12 receiving that email?

13 A I do.

14 THE COURT: What page are you on?

15 MR. BENNETT: Your Honor, I'm on the second page in
16 the middle of the document. There's an email from Karrie
17 Wichtman to Justin copying Matt, and halfway in the paragraph
18 it says, "Also I can see the logic." And the question is, how
19 will the tribe learn if you don't -- if we have to hire this O2
20 to run the business.

21 THE COURT: Run what business?

22 MR. BENNETT: According to this, whatever work Matt
23 used to do, quote unquote, in charge of things that Matt used
24 to do.

25 THE COURT: What business was going to pay these

1 people, O2?

2 THE WITNESS: We did, and after the acquisition,
3 Ascension would pay them.

4 THE COURT: So Ascension is hiring and paying for
5 somebody to do, after the acquisition or sale, what you did
6 before the sale; is that what she's saying here?

7 THE WITNESS: No.

8 THE COURT: Is that what happened?

9 THE WITNESS: No. We had all of our vendor
10 contracts.

11 THE COURT: What?

12 THE WITNESS: All of our vendor contracts at
13 Bellicose they were purchasing, and so their company would need
14 to engage with all those vendors, and O2 was one of those
15 vendors. So I guess we're presenting her the contract to
16 review and approve, you know, for when it closed.

17 Q So Ms. Wichtman was emailing you in this communication and
18 asking how are we going -- how is the tribe going to learn the
19 business if you are making us hire these outside vendors to do
20 the work; right?

21 A Let me see what she's saying. She seems to be asking how
22 O2's role will help them learn the business.

23 Q All right. Now, could you turn to the first page of this
24 Exhibit 80. Your email back responding to that is at the
25 bottom of the first page, 8:16 p.m. on February 23rd, 2015.

1 And you say, quote, I guess one question I have is who are you
2 expecting to learn it? There isn't much to do for the buyer
3 since it's built and designed to be self-sustaining as a
4 passive investment opportunity. That's what you wrote, that
5 and what followed; correct?

6 A I wrote that, yes.

7 Q And the last paragraph of that email you wrote, "I think I
8 need clarity on exactly who you are expecting to learn and what
9 it is you want them to learn. I can't learn science because
10 the words frustrate me too much. Just the same if you're
11 hoping to jam a square peg through a round hole, something will
12 get broke."

13 By that you were meaning the co-managers and the
14 persons that were actually at the tribe you did not expect to
15 understand tribal lending business any more than you understood
16 complicated science words; right?

17 A Incorrect. It was related to the servicing business. I
18 said that the servicing business needed to have adequate
19 management or it could fall apart and wouldn't be able to raise
20 institutional capital.

21 Q Take a look at Exhibit 81, please. In addition to O2, in
22 this creation of Ascension and the assignment from Sourcepoint,
23 you were requiring that, or strongly insisting that the tribal
24 entities rehire MicroBilt, your allied vendor; correct?

25 A I'm sorry. I'm just catching up on the thread. I'm

1 recommending that they take assignment through the purchase of
2 our MicroBilt relationship and take a look at the changes to
3 the contract or something here. She rejects them. And then
4 they speak.

5 Q And you tell her, essentially, if you don't hire
6 MicroBilt, the business can't work; right?

7 A No, that's not --

8 Q That's not what you said?

9 A Well, it can work without it. I don't think I said it,
10 though. Let me see. Did I say that?

11 THE COURT: What?

12 THE WITNESS: I'm checking to see if I said it. I
13 don't have these memorized. I'm just going to look real quick.

14 Q Justin says it would cause significant performance issues
15 if you don't bring MicroBilt in and agree to their terms.

16 A I'm sorry, where is that, please?

17 Q The very first email at the top of the exhibit.

18 THE COURT: As best I can tell, that doesn't have
19 anything to do with Matt Martorello. He didn't write it. He
20 got a copy of it.

21 MR. BENNETT: Yes, sir. Withdraw the question and
22 move to Exhibit 85, please.

23 Q Now, who did you hire to help put together the Eventide
24 merger papers?

25 A Initially Greenberg Traurig and then Conner & Winters.

1 Q And the merger agreement, you had a go-by. Do you know
2 what a go-by is?

3 A No.

4 Q You had a document that was used -- unrelated tribe that
5 you had gotten hold of which you weren't involved; right?

6 A Are you referring to the term sheet, the original term
7 sheet or merger agreement?

8 Q Yes.

9 A You mean the go-by meaning that it was a transaction
10 document from a different tribal acquisition deal that Rosette
11 did with another tribe?

12 Q Yes.

13 A That's what I understood it to be, yes.

14 Q And I think that is Exhibit 136. This was a document, a
15 merger agreement that was from Clear Lake Tacs, T-a-c-s, and
16 Nagus, N-a-g-u-s, Enterprises and Latinum Funding,
17 L-a-t-i-n-u-m, Funding, and this document was the basis for the
18 same document that is Exhibit 91, the agreement and plan of
19 merger for LVD and Bellicose and Eventide; correct?

20 A I've never seen this document before.

21 THE COURT: How does LVD merge with Eventide?
22 They're not merged.

23 MR. BENNETT: LVD Tribal Acquisition Company, LLC,
24 was created, and that is the company --

25 THE COURT: Doesn't merge with it. It's a lender to

1 it.

2 MR. BENNETT: Well --

3 THE COURT: Eventide was a lender to the -- a tribal
4 entity. I don't know whether it was a tribe. I think it was a
5 tribe entity. We just had a whole big fight over that.

6 MR. BENNETT: Yes, sir, but they created a new entity
7 called LVD Tribal Acquisition Company that formally acquired
8 and then --

9 THE COURT: Formally acquired what?

10 MR. BENNETT: Bellicose Capital.

11 THE COURT: Yeah, but it didn't acquire Eventide.

12 MR. BENNETT: Judge, I'm reading the name of the
13 document as Agreement and Plan of Merger.

14 THE COURT: That may be, but that isn't what
15 happened. It's 5:00 p.m.

16 MR. BENNETT: Yes, sir.

17 Q So I note that there's a document destruction paragraph in
18 your document that requires certain documents as part of the
19 sale to be destroyed. Are you aware of that?

20 A I know there is --

21 THE COURT: Which document are you talking about?
22 You said your document.

23 MR. BENNETT: Yes, sir. I'm referring to Exhibit 91
24 which is the agreement and plan of merger among LVD Tribal
25 Acquisition Company and Bellicose Capital and Eventide Credit

1 Acquisitions.

2 THE COURT: So what are you asking? Where is it,
3 what page? I don't know who wrote these documents, but they
4 sure do not accurately describe what's going on.

5 MR. BENNETT: Your Honor, page five of --

6 THE COURT: I don't know how much you paid for these,
7 but they're certainly confusing.

8 MR. BENNETT: It's page five of the document, Your
9 Honor. It's actually paragraph 2.6(d). Clarification on
10 company assets is the heading they put in there.

11 THE COURT: Page what?

12 MR. BENNETT: Page five.

13 THE COURT: So what about it? He's read it now.
14 Have you read it now, Mr. Martorello?

15 THE WITNESS: Just about, yes, sir.

16 Q So this is not in the model document that's Exhibit 136.
17 I'm wondering where did this come from? Who drafted the
18 language that said, "All company information now or that may be
19 discovered on equipment of any kind or in any written materials
20 shall be immediately provided to acquirer," which is the LVD
21 acquiring entity, "and deleted or destroyed by the holder so
22 the holder retains no copies of company information"?

23 A You are asking who created that provision?

24 Q Yes.

25 A I believe it was Conner & Winters.

1 Q That's your lawyers that did that; right?

2 A Correct.

3 Q And take a look at Exhibit 85, please. And, in fact, you
4 recall it was Conner & Winters because in this, for example,
5 this email chain where Mr. Williams, John Williams, who was a
6 lawyer, emailed you document 85.

7 A Okay, I'm on the document.

8 Q This is an email from the lawyer John Williams to you
9 dated July 9, 2015, the subject regarding M-1, Agreement and
10 Plan of Merger. And Mr. Williams suggested to you --
11 correct? -- that you should include a document retention policy
12 with a destruction schedule which, according to him, provides a
13 lot of cover should documents be destroyed that a government
14 agency wants some day. Do you see that?

15 A Sorry, let me just look at the thread, please, real quick.
16 Okay, I'm seeing discussions about transferring --

17 THE COURT: What page is it on?

18 MR. BENNETT: Page one. That that I just read from
19 is in the top email.

20 A The last email in the thread?

21 Q Well...

22 A So I see the provision in here on July 8th, 5:13 p.m.

23 Q Yes.

24 A Where he's asking if this addresses the concerns.

25 THE COURT: What is your question again?

1 Q Well, this is the inclusion of a document destruction term
2 within the merger so that, in this case, it would provide
3 cover, quote, a lot of cover should documents be destroyed that
4 a government agency wants some day.

5 A That's incorrect. The correct reason is on the pages just
6 before.

7 THE COURT: I couldn't understand you.

8 THE WITNESS: The correct reason for the provision is
9 in the pages just prior.

10 Q Okay, where?

11 A So this is Bates number ending 196 where I say -- well,
12 might even be earlier. So I say here, "It's just that on the
13 server and employee computers there must be lingering
14 information that doesn't belong and should be destroyed. For
15 example, there may be code, data, or underwriting models on a
16 Bellicose Capital server that is a former customer's, not
17 LVD's. Or more likely on some employee's computer somewhere or
18 in an old email. They aren't buying that. It needs to be
19 destroyed if it's left there. Bellicose Capital was also at
20 one time the shared services entity" --

21 THE COURT: Slow down.

22 THE WITNESS: "Bellicose Capital was also at one time
23 a shared services entity for a bunch of affiliate businesses
24 and so it has all of those legal contracts and data, you name
25 it, floating around out there." He proposed that section.

1 Q In the paragraph above he also responds, and I'm now
2 reading from the first page at the bottom --

3 THE COURT: Who is "he"?

4 MR. BENNETT: "He" is the lawyer John Williams,
5 Judge.

6 Q Mr. Williams says, "Justin and Matt" -- attorney-client
7 communication. "Justin and Matt, I have changed the wording to
8 exclude everything that was not related to a tribal entity for
9 the merger; however, as I thought through this, is there any
10 stale data that you might want to leave within the tribal
11 entity? It will have sovereign immunity from subpoena where
12 your entities will not. Just a thought as we finish this off.
13 John."

14 A I see.

15 Q In fact, you did transfer a lot of data into the tribal
16 entity such as your previous emails at Bellicose; correct?

17 A Yes. I say right here there certainly is data they will
18 be buying that is in the history.

19 THE COURT: Mr. Bennett, we're past the four hours
20 originally allotted. I told you I'd give you the day, but I
21 didn't mean that the day would end at midnight.

22 MR. BENNETT: Yes, sir, if we can take a ten-minute
23 break and if I could have another 45 minutes.

24 THE COURT: You've got to be kidding me.

25 MR. BENNETT: Another half hour.

1 THE COURT: Why do you get anything more?

2 MR. BENNETT: Judge, because of the challenge that
3 we've now had, and as I understand tomorrow, the defendant will
4 get the day tomorrow.

5 THE COURT: If I were Mr. Scheff, what I would do is
6 say the defense rests and say nothing and leave.

7 MR. BENNETT: Okay.

8 THE COURT: He wants 45 more minutes which is not
9 going to come tonight, I will tell you that. It will come
10 tomorrow. How much time do you have?

11 MR. SCHEFF: For the entire case, Your Honor --

12 THE COURT: For whatever you've got. We've gone the
13 four-hour period, and I'm not going to make you suffer
14 because -- but part of the reason I went beyond the four-hour
15 period, in fact most of the reason was that Mr. Martorello
16 doesn't really do a very good job of answering the questions
17 directly. He reframes them, thereby necessitating further
18 inquiry and makes it difficult to understand him and rambles on
19 with some answers, and some of them are appropriate and some of
20 them aren't, and it just went on so I gave him extra time.

21 MR. SCHEFF: Yes, sir.

22 THE COURT: I'm not going to give you extra time
23 beyond the four hours either, but I want to know what you think
24 you have in mind because you're going to call Mr. Martorello,
25 but I imagine most of what you were going to have him say he's

1 already said unless I've been in the wrong room.

2 MR. SCHEFF: You have not been in the wrong room,
3 Your Honor. I appreciate the flexibility and direction of the
4 Court. We're trying to keep it to four hours. If we go over a
5 little bit it will be a little bit, but we're trying to keep it
6 to four hours.

7 I think Your Honor is correct. We are going to work
8 tonight to try to streamline more than we've already done, but
9 if we run over a little bit, then we would appreciate Your
10 Honor's easing.

11 THE COURT: It's only fair for you.

12 MR. SCHEFF: Your Honor, it seems to me -- I don't
13 object to Mr. Bennett taking a few minutes to wrap up, and if
14 he wants to do it in the morning I'm okay with that, but I
15 don't see the need for another 30 or 45 minutes. I really
16 don't.

17 I think Your Honor is correct about what we're going
18 to do. We'll probably have a couple questions for Mr.
19 Martorello just to tie some things together, and then we're
20 going to play depositions is really what we're going to do.

21 THE COURT: I understand. All right. Have you
22 consulted with the brains of the outfit back there, Mr.
23 Bennett?

24 MR. BENNETT: Yes, but I didn't get a response yet.
25 We do -- I'd have to work through the numbers, but apparently

1 the time I've been talking is three hours and 40 minutes.

2 THE COURT: Is that right?

3 MR. DILLON: Roughly speaking, Your Honor, yes.

4 THE COURT: Did you check him?

5 MR. ERBACH: We have, I think, about a ten-minute
6 discrepancy from them. As of now, I'm understanding they have
7 about five minutes left, but that's trying to reconcile several
8 discrepancies --

9 THE COURT: Okay, but that's about -- as the old boy
10 said, that's about good enough for government work, isn't it?

11 MR. ERBACH: I think that's fair, Your Honor.

12 THE COURT: I'm astounded you only got three hours
13 and 40 minutes, but I guess I was -- I was pouring through
14 things at the break, during the breaks and lunch, so here's
15 what we'll do: We'll come back at 10:00 tomorrow morning, and
16 you'll have 30 minutes. Does that take care of it?

17 MR. BENNETT: If I could have 35, Your Honor.
18 30 minutes, of course, Judge. Yes, sir.

19 THE COURT: If your wife ever wants a witness, have
20 her call me. All right, and then you go, Mr. Scheff.

21 MR. SCHEFF: Thank you, Your Honor.

22 THE COURT: I'm kind of worn out. I'm not paying
23 attention -- I mean I'm not going to be able to pay attention
24 for another 45 minutes and give you all the full attention you
25 need. That's a toleration you have to put up with, as Judge

1 Williams said, when you're with old people.

2 MR. BENNETT: I was going to read the Eventide merger
3 agreement into the record.

4 THE COURT: I think you ought to do that. You can do
5 that, and the court reporter will turn the recorder on and
6 you'll have it.

7 MR. SCHEFF: Just one thing, Your Honor.

8 THE COURT: Yes, sir.

9 MR. SCHEFF: If we could start at 9:30 instead of
10 10:00 just for flight issues and things of that nature.

11 THE COURT: Yes, we'll start at 9:30.

12 MR. SCHEFF: Thank you, sir.

13 THE COURT: Thank you very much. We'll be in
14 adjournment.

15

16

17 (End of proceedings.)

18

19

20 I certify that the foregoing is a correct transcript
21 from the record of proceedings in the above-entitled matter.

22

23

24 /s/
P. E. Peterson, RPR

Date _____

25